

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION, ET AL.,

9
10 Debtor.

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13
14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 December 6, 2007

19 10:28 a.m.

20
21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
24
25

1 MOTION of the Equity Security Holders To Adjourn Disclosure
2 Statement Hearing and Equity Purchase and Commitment Agreement
3 Hearing

4
5 EXPEDITED MOTION for Order Under 11 U.S.C. Sections 105(a),
6 363(b), 503(b), and 507(a) Authorizing and Approving Amendment
7 to Delphi-Appaloosa Equity Purchase and Commitment Agreement

8
9 MOTION For Order Approving (I) Disclosure Statement, (II)
10 Record Date, Voting Deadline, and Procedures for Temporary
11 Allowance of Certain Claims, (III) Hearing Date to Consider
12 Confirmation of Plan, (IV) Procedures For Filing Objections to
13 Plan, (V) Solicitation Procedures for Voting on Plan, (VI) Cure
14 Claim Procedures, (VII) Procedures for Resolving disputes
15 Relates to Post-Petition Interest, and (VIII) Reclamation Claim
16 Procedures.

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24 Transcribed By: Esther Accardi
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P R O C E E D I N G S

THE COURT: Please be seated. All right. I'm sure you've been told this already but there is an overflow courtroom with the sound system so you can hear. And for those of you who are standing who don't particularly expect to be speaking, that may be more comfortable for you. But otherwise you can stay where you are. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn Marafioti, and Al Hogan from Skadden here on behalf of Delphi Corporation for this off omnibus hearing. Your Honor, we have filed, in accordance to the case management order, the agenda for today's hearing. There are three matters on the agenda, we propose to proceed in the order of the agenda.

THE COURT: Okay. That's fine.

MR. BUTLER: Your Honor, the first matter on the agenda is matter number 1, is the motion of the equity security holders committee to adjourn the disclosure statement hearing and equity purchase and commitment agreement hearings, filed at docket number 10795. And we filed our response last evening to that. I'm please to report, and I'll be talking more about this in a few minutes, that the equity committee is withdrawing that motion. I would, Your Honor, point on the record that there was a joinder filed, on an untimely basis, to that motion by Law Debenture Trust Company of New York, at docket number 11161. I'm advised that no one is appearing on behalf of Law

1 Debenture today and our understanding from discussions with
2 them last evening is that they are satisfied with changes that
3 have been made. But all I want to represent to the Court that
4 there's no one in the courtroom here today. In addition,
5 Brandes Investment Partners LP filed a statement in support of
6 the motion, that has now been withdrawn, that statement was
7 filed at docket number 10807. And Mr. Bernie (ph.) from Thalen
8 (ph.) is here representing Brandes.

9 THE COURT: Okay. All right. So we should move to
10 the next agenda item.

11 MR. BUTLER: Thank you, Your Honor. The next matter
12 on the agenda, matter number 2, is the Delphi-Appaloosa
13 investment agreement amendment motion, filed at docket number
14 10760. Your Honor, I'd like to -- first, if I may summarize
15 where we are in terms of discussions with respect to the
16 various objections that have been filed.

17 THE COURT: Okay.

18 MR. BUTLER: The majority of the objections, Your
19 Honor, have been resolved. I'll just walk down the list. The
20 objection filed by the securities lead plaintiffs, at docket
21 10796 is resolved, indeed withdrawn. Mr. Etkin is here on
22 behalf of the securities lead plaintiffs and can confirm that
23 to the Court.

24 MR. ETKIN: That's correct, Your Honor.

25 THE COURT: Okay.

1 MR. BUTLER: The next objection I want to deal with,
2 Your Honor, is the objection filed by the IUE-CWA, at docket
3 number 11013. Similarly, Mr. Kennedy is here on behalf of the
4 IUE-CWA and they are not pursuing that objection at today's
5 hearing and are prepared to withdraw it. And Mr. Kennedy can
6 confirm that on the record.

7 MR. KENNEDY: That is correct, Your Honor.

8 THE COURT: Okay.

9 MR. BUTLER: The next objection I'd like to address
10 is the objection of the ad hoc trade committee, at docket
11 number 11042. We have reached a settlement with the ad hoc
12 trade committee that I believe has the concurrence of the
13 creditors' committee, participated in negotiating that
14 resolution and Mr. Rosner is here from Kasowitz on behalf of
15 the ad hoc trade committee. Essentially, Your Honor, and I'll
16 just read into the record, our understanding with them. "This
17 is in full and final settlement of any and all objections of
18 the ad hoc trade committee to the disclosure and plan
19 confirmation process, including without limitation, the
20 disclosure statement, the proposed investment agreement
21 amendment and the plan of reorganization, including plan
22 confirmation matters. Unless subsequent to this settlement the
23 debtors' propose a material modification to the plan that has a
24 material adverse affect on the treatment of general unsecured
25 creditors under the plan. The two things we have agreed to do

1 with respect to the ad hoc trade committee, is first we've
2 agreed to use commercially reasonable efforts to reconcile, and
3 if agreed, allow on or before the confirmation date trade
4 claims held by members of the ad hoc trade committee. They're
5 identified by both, holder and claim number, conforming to the
6 official claims register in these Chapter 11 cases, in writing
7 to the debtors by no later than December 10, 2007." And given
8 where we are, Your Honor, in the claims administration process
9 we don't view that to be an undue burden on the estates.

10 THE COURT: Okay.

11 MR. BUTLER: The second item is, we have
12 previously -- Your Honor had previously approved that provision
13 that would have reimbursed up to 750,000 dollars of reasonable
14 and documented professional fees and expenses for the
15 committee. That cap contained in the prior order would be
16 increased to 1.5 million.

17 THE COURT: And that's subject to application?

18 MR. BUTLER: Yes. I believe that ultimately we've
19 agreed to that.

20 MR. ROSNER: David Rosner, Your Honor. Actually, we
21 didn't discuss that. I thought our understanding was that
22 would be it. So obviously --

23 THE COURT: I'm going to have to review it obviously.
24 The committee and the debtor can agree not to object to it, but
25 I'm going to have to review it.

1 MR. ROSNER: Okay. And I believe that's the answer,
2 Your Honor.

3 THE COURT: Okay. And on the first point, is this a
4 review process that you're agreeing to do on an expedited basis
5 or are you going -- you're not agreeing to allow all their
6 claims just as filed, are you?

7 MR. BUTLER: No. We're agreeing to reconcile the
8 claims. As Your Honor knows, from the claims protract process
9 1, we have reconciled substantially all of the trade claims of
10 this case at this point. They want to make sure that to the
11 extent that we haven't reconciled their claims they want them
12 reconciled. And if agreed, meaning that we agree with them and
13 they agree with us to our reconciliation, that they would --
14 that we would then put those on for allowance.

15 THE COURT: Okay. All right.

16 MR. ROSNER: Your Honor, the issue here is -- to be
17 brief, is that give a twenty-day period in which to exercise or
18 transfer of rights is a very short time frame. The
19 reconciliation process is key to members of our committee and a
20 key component to (indiscernible - not speaking near a
21 microphone)

22 THE COURT: Okay.

23 MR. ROSNER: I think Mr. Butler was accurate before.

24 THE COURT: Very well.

25 MR. BUTLER: And, Your Honor, we have reviewed that

1 settlement with the unsecured creditors' committee who I
2 believe also support the settlement. Mr. Rosenberg, is that
3 correct?

4 MR. ROSENBERG: That's correct, Your Honor.

5 THE COURT: Okay.

6 MR. BRILLIANT: Your Honor, Allan Brilliant on behalf
7 of certain bondholders that filed some objections in connection
8 with the matter. We learned about the settlement with the ad
9 hoc trade committee just a few moments ago. We obviously
10 reserve all our rights to object to the fee application when it
11 occurs. And our understanding is that if Your Honor is not
12 approving the settlement from the standpoint of increasing the
13 cap at this point but instead just agreeing with debtor and the
14 creditors' committee reserve -- agree not to object.

15 THE COURT: That's right. And before anyone else
16 stands up, no one has to reserve any rights. They're reserved.

17 MR. BRILLIANT: Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, the next objections that I'd
20 like to address are the objections of the official committee of
21 unsecured creditors. They have filed three objections in this
22 case at docket numbers 10805, 11037 and 11290. The first of
23 those two objections which were comprehensive in their scope,
24 objections at docket numbers 10805 and 11037 had been settled
25 between the creditors' committee and the debtors, and are to be

1 deemed withdrawn. The limited objection filed solely on the
2 issue of the interest rate cap provision of the EPCA that --
3 that was the only subject of objection docketed at number
4 11290, that would go forward but all other objections to the
5 creditors' committee are deemed settled and withdrawn. I'd
6 like Mr. Rosenberg to confirm that I got it correct.

7 MR. ROSENBERG: That is correct, Your Honor.

8 MR. BUTLER: The next item, Your Honor, I'd like to
9 move to is the equity committee who's filed two comprehensive
10 objections at docket number 10799 and 11032. The equity
11 committee, as Your Honor may have gleaned from the notice of
12 filing, that the debtors filed on December 3rd as part of our
13 notice filing, agreed to settle the case with the debtors and
14 move forward consensually based on a reservation of rights with
15 respect to certain intraclass matters that were -- they thought
16 were important to reserve rights that they may have at war or
17 otherwise with respect to those matters. From the debtors'
18 perspective we've had discussions with the plan investors who
19 similarly want to reserve -- to the extent those reservation of
20 rights for the equity committee are directed towards them, in
21 any way. They want to, of course, reserve their legal,
22 equitable and contractual rights and also make sure that
23 they're not prejudice under the EPCA, which is being considered
24 today, should Your Honor grant the debtors' application and
25 enter the EPCA order. And we have -- I discussed both of those

1 competing concerns with representatives of the equity committee
2 and of the plan investors in detail. They have left it to me
3 to make a statement on the record and Mr. Lauria is speaking
4 for the plan investors, Mr. Joseph is speaking as special
5 counsel for the equity committee, will correct me if I haven't
6 gotten it wrong, both what I have just said into the record and
7 what I'm about to say.

8 As part of this understanding it has been mutually
9 agreed that the attempt to implement that reservation of rights
10 matter through a change to Section 1.9 of the plan should be
11 withdrawn, and the debtors have agreed to withdraw the
12 modification that was submitted this week with respect to
13 Section 1.9, which was the definitions section. And the equity
14 committees also agreed not to seek that provision going
15 forward. There is also no prejudice to -- to be no prejudice
16 by this reservation of rights. As I indicated to the legal,
17 equitable or contractual rights of the plan investors including
18 specifically those rights bargained for under the EPCA, should
19 the investment agreement be approved by Your Honor.

20 We have also agreed to submit for Your Honor's
21 consideration a paragraph in the disclosure statement order,
22 not in the investment agreement order. That reads as follows:
23 "The reservation or rights made by counsel to the equity
24 committee on the record of the hearing, and that will now be
25 the reservations as made by the reservation of rights as

1 announced on the record by the debtors at the hearing, held on
2 December 6, 2007, regarding the equity committees' reservation
3 of rights, to assert claims, interest, defenses, offsets
4 against any noteholders of equity in these Chapter 11 cases,
5 solely within class 1G-1, with respect to the allocation of
6 plan consideration among holders -- existing holders" -- strike
7 that. "Among holders of existing common stock based on the
8 facts and circumstances in these Chapter 11 cases. And the
9 reciprocal reservation of rights made on the record in
10 connection with the plan investors, with respect to all of
11 their rights reserved -- excuse me, with respect to the rights
12 reserved by the equity committee on the record of the hearing
13 of the same date on incorporated herein, and all such rights
14 are reserved in all respects."

15 The point here is that both sides fully reserve their
16 rights on these matters. They are not to be prejudicial in any
17 way to the investment agreement, or the contractual, legal and
18 equitable rights that are preserved by both parties in the
19 reciprocal reservation of rights. And I will pause for a
20 moment and ask Mr. Joseph first to confirm that I have said it
21 correctly with respect to the equity committee.

22 MR. JOSEPH: Your Honor, Gregory Joseph of the equity
23 committee. That is accurate.

24 THE COURT: Okay.

25 MR. BUTLER: And then I'd like to ask now -- pause

1 and ask Mr. Lauria on behalf of the plan investors whether I
2 made the statement correctly?

3 MR. LAURIA: Your Honor, I've been authorized to
4 represent on behalf of all of the claim investors that that
5 statement is correct and we agree to it.

6 THE COURT: Okay.

7 MR. BUTLER: And, Your Honor, I also would like Mr.
8 Lauria to confirm and other plan investors represented by
9 counsel, here in Court, if they disagree to confirm that all of
10 the execution pages of the bid letter in connection with the --
11 with respect to the EPCA are now executed and will be available
12 and released to the debtors at the conclusion of the hearing
13 assuming the order's approved.

14 MR. LAURIA: Your Honor, that is correct. Subject to
15 of course just confirming that the language is removed from
16 Section 1.9, and an order acceptable to the parties is entered
17 by the Court. We're prepared first to deliver our executed bid
18 letters and subject to receiving the order to enter into the
19 amended EPCA.

20 THE COURT: Okay.

21 MR. ROSENBERG: May I, Mr. Butler, just a slight
22 clarification. I was hearing this for the first time, Your
23 Honor, and it was clear to me what the equity committee was
24 preserving in your statement. It was not clear to me what the
25 investors were preserving. Am I correct in assuming that what

1 it is preserving relates only to equity holders in trusses?

2 MR. BUTLER: This issue is all related -- this entire
3 discussion is related to intra class equity issues with respect
4 to -- as holders of equity.

5 MR. ROSENBERG: So that's true with respect to the
6 investors as well?

7 MR. BUTLER: Yes. But, for example, and so -- Your
8 Honor, was clear on this. I'll give an illustration to make
9 sure people are clear on this. The investment agreement
10 provides, assuming it's approved by the Court and the effective
11 date of the plan occurs, provides for certain exculpation
12 releases and other matters --

13 MR. ROSENBERG: This is precisely where I was going.

14 MR. BUTLER: -- which will be preserved.

15 MR. ROSENBERG: Okay.

16 MR. BUTLER: This is not a backdoor tact on what has
17 been bargained for. But, for example, and we discussed this
18 with the equity committee at great length, the exculpations
19 property exclude, as the U.S. Trustee would want us to, for
20 example -- by way of example, willful misconduct. And so to
21 the extent that there are matters that are excluded from the
22 coverage of those documents and the equity committee chooses to
23 pursue those matters, their rights are fully preserved, the
24 rights of the plan investors, whatever they may be, you know,
25 contractual, legal, equitable or otherwise to defend against

1 those, is fully preserved. This is a full, complete,
2 reciprocal reservation of rights.

3 MR. ROSENBERG: I ask again, this is not -- am I
4 correct that this is not intended to create some kind of
5 exception or codicil, vis-a-vis the exculpation as drafted and
6 agreed upon vis-a-vis the creditors' committee?

7 MR. BUTLER: That is absolutely correct.

8 MR. ROSENBERG: Thank you.

9 THE COURT: Vis-a-vis the creditors' committee or
10 anyone else?

11 MR. BUTLER: That is absolutely correct, Your Honor.

12 THE COURT: Okay.

13 MR. BUTLER: This is not an amendment, codicil, or
14 anything else to the investment agreement.

15 THE COURT: Okay.

16 MR. BUTLER: That is precisely the point the plan
17 investors wanted us to make and that the equity committee has
18 agreed to.

19 MR. ROSENBERG: Thank you.

20 THE COURT: Okay.

21 MR. BUTLER: Anyone else? Your Honor, based on that
22 understanding the -- I also would like to address, as I
23 indicated, the objections of the equity committee at, again,
24 docket numbers 10799 and 11032. And I'm please to announce,
25 here on the record, the equity committee is prepared to

1 withdraw those objections and support entry of the investment
2 agreed order. And I would ask Ms. Torres if she would confirm
3 that.

4 MS. TORRES: We do confirm that, Your Honor. In
5 light of the consideration that's being offered to the equity
6 committee under the plan we're in support of the plan and the
7 third party release therein.

8 THE COURT: Okay. Thank you.

9 MR. BUTLER: Your Honor, I believe that leaves for
10 prosecution today only the objections of the various
11 bondholders. There's the bondholders group represented by
12 Goodwin Procter, who's filed three objections, at docket number
13 10800, 11036 and 11286. There is the objection of Wilmington
14 Trust Company Indentured Trustee at docket number 11040. There
15 is the objection of Highland Capital that was filed, we would
16 argue, on an untimely basis at docket number 11292. And of
17 course, the one non-bondholder objection, the creditors'
18 committee limited objection on the interest rate cap at docket
19 number 11286.

20 THE COURT: Okay. Why don't I hear from those
21 parties then?

22 MR. BUTLER: Your Honor, we're not -- we're not
23 intending to make an opening statement today in terms of the
24 merits. We do have an evidentiary case to put in. In that
25 regard, I would point out there are some time constraints with

1 witnesses and we'd like to proceed as soon as we can with
2 witness testimony.

3 THE COURT: I've read the objections. I guess,
4 I'm -- because of the nature of this process, as Mr. Butler
5 said, from Wilmington Trust and the ad hoc bondholder group,
6 there's more than one objection. And what I'd like to hear
7 from you all, and just briefly, is what is extent in your
8 objections?

9 MR. BRILLIANT: Sure. Your Honor, all of our
10 objections, you know -- Allan Brilliant on behalf of Caspian
11 Capital Advisors, Castlerigg Master Investments, Davidson
12 Kempner Capital, Elliott Associates, L.P., Everest Capital
13 Ltd., Nomura Corporate Research & Asset Management Inc.,
14 Northeast Investors Trust, Sailfish Capital Partners and White
15 box Advisors, LLC. Your Honor, all of our objections, you
16 know, continue to be effective.

17 THE COURT: Okay.

18 MR. BRILLIANT: Your Honor, we were not able to
19 resolve any of our objections.

20 THE COURT: Okay. Is that case for you also, Mr.
21 Fox?

22 MR. FOX: Yes, Your Honor.

23 THE COURT: Okay. So -- I'm sorry, you still have
24 your seat, no one's taking it. Let me hear from the debtors
25 then on their case in favor of the entry of the EPCA.

1 MR. BUTLER: Your Honor, one matter I do want to
2 point out on the record is that there is this continuing
3 dialogue with Mr. Brilliant and his firm about who they
4 represent and what it constitutes. But I would point out here
5 that it doesn't seem to me that they can have these matters
6 both ways. They assert that they don't represent a bondholders
7 committee, ad hoc or otherwise, and therefore they represent
8 only specific creditors. But at each hearing they changed they
9 composition of who those creditors are. And so, for example,
10 at this hearing they filed a supplemental objection yesterday
11 which was to be only a supplemental objection as it relates to
12 people who are already in the process. And they added Everest
13 Capital Ltd. and Northeast Investors Trust, and then added a
14 footnote that said -- footnote number 1 in their latest
15 objection that says they join in and adopt the supplemental and
16 restated objections that they're originally parties thereto,
17 the prior objections. I understand when a committee puts
18 forward an objection how the membership of the committee swings
19 and people file statements. I don't understand how people who
20 are not in this process who have missed objection deadlines,
21 who have not participated or able to show up the day before a
22 hearing and say I have the same rights as everybody who has
23 followed the rules. So I just -- I say that for the record,
24 I'm not --

25 THE COURT: There are at least some people in this

1 group who have been there from the beginning.

2 MR. BUTLER: There have been. There are certainly
3 some, Caspian being one of them who, I think, has been there
4 from the beginning.

5 THE COURT: Okay. All right. Essentially, I'm
6 hearing from them then.

7 MR. BUTLER: Can I have one moment, Your Honor?

8 THE COURT: Sure.

9 MR. BUTLER: Your Honor, I've just been advised, just
10 so the record is clear, that the objection by Highland Capital
11 Management L.P. we know is filed as an objection to the EPCA at
12 11292. Insofar as that is an objection to the EPCA, it's to be
13 deemed withdrawn.

14 THE COURT: Well, I took it more as a data point
15 anyway.

16 MS. ELKIN: Your Honor, Judy Elkin for Highland. It
17 was just rolled up into the objection to the disclosure
18 statement. And to the extent the Court is hearing the EPCA
19 motion separately from the disclosure statement we would be
20 discussing it as part of the disclosure statement.

21 THE COURT: Okay. That's fine.

22 MS. ELKIN: Thank you, Your Honor.

23 MR. BUTLER: Your Honor, in our normal presentation
24 we would go through the exhibits and deal with exhibit issues
25 now and get those into the record. In light of the exigency of

1 the scheduling of some of the witnesses, what I'd like to do,
2 if I can, is move directly to the presentation of David
3 Resnick, which is Exhibits 3 and 4 in the joint exhibit index.
4 These are both marked highly confidential. And these were the
5 declarations dated November 2, 2007 and November 21, 2007,
6 pursuant to which Mr. Resnick was deposed by certain of the
7 objectors for a period in somewhere in excess of six hours,
8 back a few Sundays ago. And I'd like to present him for -- I'd
9 like to move the admission of those declarations, but I'd like
10 to present him for cross examination by the parties and any
11 questions the Court may have.

12 THE COURT: Okay.

13 MR. ISENMAN: Michael Isenman from Goodwin Procter
14 for the bondholders represented by Goodwin Procter. I kind of
15 missed from this document that we'll do at cross that we did
16 have some objections to some of the -- to part of the
17 declaration. And those objections were not resolved with
18 respect to the admissibility, we ask that be heard before.

19 THE COURT: Okay. What's the nature of the
20 objection?

21 MR. ISENMAN: Your Honor, to make this easier we
22 have -- if I may approach for one moment? What I believe we
23 did is we highlighted portions of the declarations that we
24 objected to and provided the basis -- provided that to the
25 debtors. And just as an aid to the Court I'd like to provide

1 it to the Court.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, that was provided to us
4 minutes ago.

5 THE COURT: Well, it's okay. I would ask him to read
6 the section anyway so -- you can hand it up.

7 MR. ISENMAN: And, Your Honor, just to correct the
8 record, we did provide this to the debtors late last night.

9 THE COURT: Okay.

10 MR. ISENMAN: I apologize, Your Honor, I think I
11 might have handed up my copy of my handwritten notes.

12 THE COURT: I don't have that.

13 MR. ISENMAN: At any rate, Your Honor, there are two
14 declarations being -- as I understand, being submitted for Mr.
15 Resnick. And we have certain -- there are certain objections
16 we have on the basis of hearsay or no show of personal
17 knowledge. We don't object to its admission as an expert
18 opinion, we simply object to it's admission for the proof of
19 the matter asserted and where there's not been a showing that
20 he actually does have personal knowledge of it. So, for
21 example, I'm looking at his -- let's call it the declaration of
22 David Resnick as opposed to first supplemental Declaration of
23 David Resnick. And for example, paragraph 12 of the
24 declaration of David Resnick, we object to on the basis of Rule
25 802, hearsay.

1 THE COURT: I'm sorry. You have given me a first
2 supplemental and a revised first supplemental.

3 MR. ISENMAN: Did I? Are these not -- I apologize,
4 Your Honor.

5 THE COURT: Okay. All right, now I have it. Okay.

6 MR. ISENMAN: So now -- Your Honor, I'm looking at
7 the declaration of David Resnick.

8 THE COURT: Well, why don't we go through these in
9 order?

10 MR. ISENMAN: That's fine. So, Your Honor, if we go
11 through them in order we have no objections to the first eleven
12 paragraphs. Paragraph 12, which is on page 7 of that
13 declaration, Your Honor, we object to on hearsay grounds. Do
14 you want something -- do you want argument, Your Honor, or --

15 THE COURT: I'm reading it.

16 MR. ISENMAN: Okay.

17 THE COURT: Do you object to it being submitted on
18 the basis that this is the debtors' investment banker's
19 understanding as to what has occurred?

20 MR. ISENMAN: And, Your Honor, we don't have an
21 objection to it being admitted on that basis.

22 THE COURT: All right. Is the case for all of these
23 hearsay objections?

24 MR. ISENMAN: Yes, Your Honor.

25 THE COURT: All right. Okay.

1 MR. ISENMAN: Paragraph 13, we object that Mr.
2 Resnick does not have personal knowledge.

3 THE COURT: Well, what's the basis for that
4 contention? He's not been talking to his client?

5 MR. ISENMAN: Well, Your Honor, I guess to the extent
6 that he's talked -- if it's an understanding, again, we don't
7 object to it. We're just objecting that he is not -- he can't
8 testify as to its truth.

9 THE COURT: Well, I don't understand that. It says
10 the "debtors also considered whether to initiate contacts with
11 other potential plan investors." I mean, have you asked him
12 whether he knows this based on his personal knowledge?

13 MR. ISENMAN: Your Honor, maybe we could defer this
14 objection until cross?

15 THE COURT: Why don't we defer it to cross?

16 MR. ISENMAN: Okay. Thank you, Your Honor.

17 THE COURT: All right.

18 MR. ISENMAN: And with that in mind, Your Honor,
19 maybe it makes sense for all of our 602, you know, personal
20 knowledge objections to defer those.

21 THE COURT: Okay.

22 MR. ISENMAN: With respect to paragraph 19, we have
23 objected to it on the grounds that this is an opinion, but it's
24 not an opinion within the scope of what he's an expert on. It
25 simply characterizes what the EPCA amendment does.

1 THE COURT: So the agreement speaks for itself on
2 this.

3 MR. ISENMAN: Exactly, Your Honor.

4 THE COURT: It certainly reflects the debtors'
5 understanding of what the agreement says.

6 MR. ISENMAN: And again, Your Honor, we don't object
7 to it admitted on the basis of what the debtors' understanding
8 is, we simply object to its characterizing a document that does
9 speak for itself.

10 THE COURT: Okay.

11 MR. ISENMAN: And I believe, that takes care of that
12 declaration, Your Honor, with the understanding that --

13 THE COURT: Okay. So the same would apply to
14 paragraph 20 also.

15 MR. ISENMAN: That's right. And then we have the
16 first supplemental declaration, Your Honor, against of Mr.
17 Resnick. And I believe the same arguments apply but the first
18 paragraph that we object to is paragraph 3.

19 THE COURT: All right. All of these paragraphs have
20 a hearsay objection to them. And again, assuming that the
21 debtors are introducing this for what the debtors' understand
22 to be the state of play, vis-a-vis their various constituents
23 and negotiating adversaries, you don't object to that? It's
24 just as to whether that's actually the truth?

25 MR. ISENMAN: That's correct, Your Honor.

1 THE COURT: Okay. The difference between trying to
2 read Appaloosa's mind and knowing it's mind. In other words --

3 MR. ISENMAN: That's correct, Your Honor.

4 THE COURT: Okay. All right. And then, should we
5 deal with the 602 point also at cross then?

6 MR. ISENMAN: I think that's probably the right way
7 to approach here, Your Honor.

8 THE COURT: Okay.

9 MR. ISENMAN: And I believe that takes care of all
10 our objections to these two declarations. Thank you.

11 THE COURT: All right.

12 MR. FOX: Your Honor, if I may? Edward Fox from
13 Kirkpatrick & Lockhart, Preston Gates Ellis, LLP on behalf of
14 Wilmington Trust Company Indentured Trustee. With respect to
15 these two declarations, Your Honor, there are various
16 discussions of settlement discussions throughout them. We have
17 no objection to them provided that the fact that somebody may
18 have -- that there may be an indication that -- that a party
19 may have agreed for instance to a certain valuation or a
20 certain deal is only used to process of how the negotiations
21 played out, as opposed to try to bind any party later that they
22 may have now agreed to a particular valuation for instance or
23 something of that nature.

24 The other point, there is also valuation analysis
25 here. The purpose of today's hearing is not to go through

1 valuation analysis as it would be in the confirmation hearing.
2 And on that point, we just reserve rights to address that at
3 confirmation if we so desire.

4 THE COURT: Well, I'm not sure what that means, the
5 last point. I mean, to some extent the issues overlapped, to a
6 large extent they don't. But I may well consider valuation
7 testimony today, it's possible.

8 MR. FOX: Well, then, the -- we'll deal with it then
9 if we have to.

10 THE COURT: Okay. All right.

11 MR. FOX: But for purposes of the EPCA amendment, not
12 for purposes of confirmation.

13 THE COURT: Right. Of course.

14 MR. BUTLER: Your Honor, we have no issue -- the
15 debtors have no issue to Mr. Fox's statement, it's about four
16 way.

17 THE COURT: Okay. All right. With those caveats and
18 for the purposes outline a moment ago, I'll admit Mr. Resnick's
19 declarations subject to the right of the objectors to cross
20 examine him.

21 (Declarations of David Resnick were hereby received as Debtors'
22 Exhibits 1 and 2 for identification, as of this date.)

23 MR. BUTLER: Your Honor, then we make Mr. Resnick
24 available for cross examination.

25 THE COURT: Okay.

1 (Witness is sworn)

2 THE COURT: For the record, can you spell your name.

3 THE WITNESS: Yes. It's David Resnick, R-E-S-N-I-C-
4 K.

5 THE COURT: You can go ahead.

6 MR. MOUSTAKAS: If I can take a moment to organize my
7 podium.

8 CROSS EXAMINATION BY

9 MR. MOUSTAKAS:

10 Q. Good morning.

11 A. Good morning.

12 MR. MOUSTAKAS: Let me -- Mr. Isenman reminds me of
13 my request to insure there are not other witnesses present. I
14 would like to invoke the rule on witnesses at this point. I
15 don't know that there are other witnesses here.

16 THE COURT: There are but they're also the client.

17 MR. MOUSTAKAS: Well, with the exception of corporate
18 representative, which I assume is entitled to be here --

19 THE COURT: Okay. I'm not sure there are -- are
20 there any others?

21 MR. BUTLER: The only one -- Mr. Tepper is not in the
22 courtroom, he will be called a little bit later, he's not
23 present in the courtroom today.

24 THE COURT: Okay.

25 MR. BUTLER: Mr. Miller and Mr. Sheehan, our chairman

1 and our chief restructuring officer, are present in the
2 courtroom.

3 THE COURT: Okay. All right.

4 BY MR. MOUSTAKAS:

5 Q. If you would turn around -- I want to begin by asking you
6 to grab Exhibit 108? And I think it's going to be in the
7 binders behind you.

8 THE COURT: What volume is that?

9 THE WITNESS: It's volume VII, Roman numeral VII.

10 Q. You've got that in front of you?

11 A. Yes.

12 Q. Do you recognize this document, sir?

13 A. Yes.

14 Q. Now, how is it that you recognize it?

15 A. This is an exhibit that Rothschild worked with Skadden to
16 prepare for this hearing.

17 Q. Okay. So when you say Rothschild worked with Skadden to
18 prepare, who at Rothschild worked with Skadden to prepare it?

19 A. My more technologically adept colleagues.

20 Q. And who are they?

21 A. Mr. Wang, Mr. Shaw.

22 Q. And whose idea was it for this demonstrative to be
23 created?

24 A. My understand is one of the Skadden attorneys thought it
25 would be a good one-page compilation of information that we had

1 on other exhibits, so we could show everything on one page.

2 Q. Okay. And what role, if any, did you play in either the
3 schematic of this exhibit or its creation?

4 A. The discussion of the exhibit generally and reviewing how
5 the information would be presented.

6 Q. And what do you understand this exhibit to depict, what is
7 it showing us?

8 A. The exhibit shows as I mention on one page a number of key
9 elements of relating to the process of the case and
10 Rothschild's valuation as presented to the board. And the
11 various plans and plan amendments that the debtor filed as well
12 as the trading prices of the company's bonds and trust
13 preferred securities.

14 Q. Okay. And what do you understand the sort of -- if I
15 could speak colloquially, what's the bottom line of this? What
16 are you trying to show? What is Rothschild trying to show in
17 this document -- in this demonstrative?

18 A. I think it's just a compilation of a number of key facts.
19 And showing that we have a view on the value of the final
20 reorganization that's based on very traditional and well
21 recognized metrics that investment bankers use to value
22 companies emerging from Chapter 11. And as I think as everyone
23 knows that shifted slightly as the company adjusted its
24 business plan prior to the filing of the amended plan, dated
25 October 29th. And it also gives a perspective of another

1 single data point that some parties use to look at and consider
2 for valuation which is the trading price of the company's
3 existing securities. And as I said, we try to reflect all of
4 that on one page.

5 Q. Okay. And so there's an historical component of this and
6 then I take it there's sort of an analytical component of this,
7 is that fair to say?

8 A. I'm not sure what you mean by historical component.

9 Q. Let me ask it in a more straight-forward fashion. Is this
10 chart attempting to chart the trading price of the bonds and
11 the toppers to get an implied total enterprise valuation of a
12 company, does it do that among other things?

13 A. Well, that's -- as I mentioned that is one way to look at
14 value where the securities are trading in the market. And we
15 reflect that on this page.

16 Q. And so it shows the implied total enterprise value versus
17 Rothschild's valuation range prepared in the various valuation
18 analysis that we talked about at your deposition in connection
19 with the plan, isn't that right?

20 A. Yes.

21 Q. Now, for example, for the plan of reorganization if you
22 look at the line showing the plan of reorganization having been
23 filed on September 6, 2007, with respect to that, first of all,
24 as a preliminary matter, you had a range of valuation between
25 11.4 billion and 13.9 billion, is that correct?

1 A. The -- yes. As reflected on this page I think the range
2 was from 11.4 to 14.4, actually.

3 Q. Okay. Right, thank you. So that's represented by those
4 red dotted lines essentially in the middle of the chart, right?

5 A. Correct.

6 Q. Okay. And on September 6, 2007 there was an implied total
7 enterprise value of approximately 12,750,000 is that correct?

8 A. I'm not sure I understand what you mean by an implied
9 total enterprise value.

10 Q. Sure. Do me a favor, can you identify a vertical line
11 that describes the date on which the plan of reorganization was
12 filed, that 9/6/07 date? Do you see that on the chart?

13 A. Yes.

14 Q. Okay. And if you use that as one of your axis and you
15 look at the total enterprise value on the vertical axis and you
16 run that across does that tell us that the chart is plotting an
17 implied total enterprise value at 12,750,000,000?

18 A. I think what it says that if you want to rely on a trading
19 price of the company's securities in the market at that date,
20 the total enterprise value that their current trading price
21 would imply is, as you said, approximately 12.75 billion, at
22 that single date.

23 Q. At that snapshot?

24 A. At that snapshot.

25 Q. Okay. And by September 11th, based on -- again, based on

1 the trading price of the senior notes the implied total
2 enterprise value had dropped to 11.4 billion, is that fair to
3 say?

4 A. I'm sorry, at what date?

5 Q. September 11?

6 A. In September 11th --

7 Q. You see that that's one of the dates on the horizontal
8 axis on the bottom?

9 A. Yes.

10 Q. Okay.

11 A. That's correct.

12 Q. Okay.

13 A. 11.5, somewhere in that range.

14 Q. Okay. Okay. Fine. So -- and perhaps I should have done
15 this a little bit earlier, the ocher, the gold line, is what?

16 A. The average trading price of the trust preferred
17 securities.

18 Q. And you sometimes hear those referred to as the toppers,
19 right?

20 A. Yes.

21 Q. And the black line -- not the vertical lines, obviously,
22 the -- what's that?

23 A. The average trading price of the bonds.

24 Q. And as you said before the red dotted lines are the range
25 from your valuation, correct?

1 A. Yes. As of August 27th.

2 Q. Right. And since we're going through and describing
3 what's on the chart let's just finish up. Underneath the 14.4
4 billion your high valuation, the top of the range, there's a
5 dotted line beneath that, fainter dotted line gray, of 13.9,
6 and that represents the total enterprise value that was
7 selected in your analysis as the basis for making certain
8 determinations, is that fair to say?

9 A. I wouldn't say it was selected in our analysis. It was a
10 number that was intensely negotiated among the stakeholders in
11 the case as the total enterprise value around which they would
12 construct a consensual plan of reorganization. And we used
13 that data point for this analysis.

14 Q. But it was in an -- it was an assumed -- it was an assumed
15 total enterprise valuation. In other words it was backed
16 into -- it was the number that got the creditors a hundred
17 percent recovery, correct?

18 A. I would say it was the number that all the stakeholders
19 agreed would be the basis for a total enterprise value around
20 which they would construct a consensual plan of reorganization.

21 Q. And that was because it was the number that would show a
22 hundred percent recovery on the bonds held by our clients,
23 correct?

24 A. That was the number that the unsecured creditors'
25 committee -- at which the unsecured creditors' committee would

1 receive par plus accrued interest, which was a very important
2 aspect of their agreement to this plan.

3 Q. Okay. Now, to the right of those two dotted lines, in
4 between them, sort of dissecting them is a green dotted line,
5 what is that describing?

6 A. Well the top of the line is the high-end of the range of
7 our revised valuation that accompanies the October 29, '07 plan
8 amendment. And then the green line below is the lower end of
9 the range.

10 Q. Great. So that's 11 -- the range of 11.2 to 14.1, right?

11 A. Yes.

12 Q. Okay. And then there are -- it looks like three more
13 dotted lines that come in between your high and low -- your
14 updated high and low, and what are those? They're dated 10/29,
15 11/14 and 12/3 '07.

16 A. Those lines represent the total enterprise value around
17 which the stakeholders renegotiated the plan, and on October
18 29th agreed to file a plan amendment using a thirteen billion
19 TEV as the basis for a consensual agreement -- actually, did
20 not have the full support of the equity committee. And then at
21 11/14, 13.4 billion which did not have the support of the
22 committees. And then recently on December 3rd, at 13.3 billion
23 which now has the support after extensive negotiation among the
24 parties of the official committee of creditors and the equity
25 committee, plan investors of General Motors, and the debtor.

1 Q. Okay. Thank you. That was helpful. Now, you've talked
2 about the fact that the chart, among other things, tracks the
3 price of the bonds and expresses a way in which we can
4 understand based on those prices the total enterprise value of
5 the enterprise. And you've actually --

6 MR. BUTLER: Objection, Your Honor. He's beginning
7 to testify. I don't think that's what Mr. Resnick said at all.

8 THE COURT: Sustained.

9 MR. MOUSTAKAS: Let me see if I can ask it again.

10 Q. Using the line that you described as the average price of
11 the bonds, I thought you testified, did you not, earlier that
12 an implied total enterprise value can be derived from that
13 graph, at any moment in time along the axis, is that right?

14 A. I said you could calculate a data point, that data point
15 at a specific date, yes.

16 Q. And as graphically represented on the chart, by going
17 across to the vertical axis -- I can never remember the X
18 axis -- the vertical axis to the X axis?

19 A. Yes.

20 Q. So you can sort of run a course on the line of the X axis
21 to a particular date and find the implied total enterprise
22 value relating to the bonds, correct?

23 A. Reflected by the trading price of bond. I think earlier
24 you said it reflects the total enterprise value of the company.

25 Q. If I did, I apologize, that was unintentional. So you've

1 actually taken this chart just through December 4th, just
2 through two days ago, correct?

3 A. Correct.

4 Q. And that is the announcement of this latest series of
5 revisions, correct?

6 A. Correct.

7 Q. Okay. And do you recall what the trading price was on the
8 4th of December -- I'm sorry of the bonds?

9 A. My recollection was it was -- they were on average around
10 fifty-nine. You know, we tracked that, I don't know if that's
11 in one of the exhibits, but that would be my guess.

12 Q. Without attempting to get too detailed, graphically we see
13 that there's a precipitous decline based on the bond prices on
14 your graph, am I right about that?

15 A. There is a decline, yes.

16 Q. Okay. Well, there's a reason that I used an adjective,
17 right. It was in my question because I want you to react to
18 it. So when I said precipitous decline, you can say no, I
19 don't think it was precipitous. But I want you to react to
20 that part of the question. So looking at the trend as a whole
21 you would agree with me that that is one of the three or four
22 most significant declines in a short time on this graph,
23 correct?

24 A. It is. It is among the larger declines on this graph, but
25 the trading prices as you can see, and frankly if we would have

1 taken this exhibit back further from the beginning of the case,
2 I think what would be clear, and what's often typical in the
3 trade prices of distress securities, in my experience, is that
4 they are tremendously volatile.

5 Q. But we don't know what that looks like because that's not
6 what we got in front of us, right? We've got in front of us
7 Exhibit 108, right?

8 A. Correct.

9 Q. Okay. Good. So if one were to buy senior bonds in the
10 fifties, I think it's lower than fifty-nine, but if that's your
11 testimony that can be verified, the senior noteholders are
12 receiving par plus accrued and -- and under the plan we assume
13 that the senior noteholders are going to be receiving par plus
14 accrued in stocks and rights, that means if the debtors confirm
15 a plan under a current time limit one could more than double
16 their money in approximately ninety days, is that correct? If
17 you follow the logic of this out?

18 A. I'm not -- I'm not sure I would make the same statement
19 that you would. What I would say is that if someone does a
20 traditional valuation of Delphi looking at its longer term --
21 the technical term is fully distributed value, and believe
22 using different methodologies, the valuation is somewhere
23 within our range that that range is reasonable. If you buy
24 those bonds in the high fifties, at some point, you will
25 receive a very significant return on those bonds. I disagree,

1 it may not be within ninety days but at some point you could
2 receive an attractive return. I think people would certainly
3 consider that just as they consider buying bonds not long after
4 the company filed when they were trading at significant
5 discounts as well.

6 Q. I do want to ask you something, because -- have you
7 read -- have you had an occasion to read the debtors' omnibus
8 reply to objections to Delphi-Appaloosa investment agreement
9 amendment motion in response to equity committees emergency
10 motion to adjourn the hearing. Have you read that?

11 A. No, I have not.

12 Q. You went to the University of Chicago Business School?

13 A. Yes.

14 Q. You said something about sort of longer term view. I want
15 to understand with respect to all the valuation
16 methodologies -- and I know I'm getting ahead of myself but
17 bear with me. With respect to all the valuation methodologies
18 that you used in conducting your valuation analysis and your
19 updated valuation analysis, I presume we'll talk about a little
20 later, all of those methodologies have some way or another of
21 taking into account long-term value, correct?

22 A. Some more than others.

23 Q. So you're projecting out and then just bringing back and
24 discounting it in the DCF, right?

25 A. Right. But I would say certain of those methodologies do

1 not reflect long-term value as much as the others. Such as the
2 trading price of comparable companies reflect the value as of a
3 certain date, just like the trading prices of Delphi's bonds
4 do, whereas a discounted cash flow analysis will fully reflect
5 future value because you look at company's projections and
6 discount them back to the future. The comparable company
7 analysis of transactions in the industry has some reflection of
8 longer-term value because it's the value in which comparable
9 companies were acquired which the third party paid value for
10 and you assume that they want to realize a return on that. So
11 that has some reflection of future value as well.

12 Q. I think you can set that aside for now. Let's turn to the
13 revised plan.

14 THE COURT: The revised what?

15 MR. MOUSTAKAS: I'm sorry. The revised plan.

16 Q. I guess I want to talk about the -- your --

17 MR. MOUSTAKAS: Let me strike that.

18 Q. I want to talk about your valuation analysis, go back to
19 the chart momentarily. Your valuation analysis --

20 MR. MOUSTAKAS: The Court's indulgence?

21 Q. Your most recent valuation analysis. That's the updated
22 valuation analysis, okay. You testified I think earlier that
23 your range was 11.2 to 14.1, is that right?

24 A. Yes.

25 Q. Okay. And you derived a midpoint of 12.7 in the updated

1 valuation analysis, is that right?

2 A. Well, that just is the arithmetic midpoint.

3 Q. Right. We talked about that before. Now, you would agree
4 with me that if one used under your updated valuation analysis
5 leaving aside a question about whether a new valuation, a new
6 comparable should be used, leaving that aside for the moment.
7 Based solely on the valuation as you did at the updated
8 valuation as you did, if you use a midpoint of 12.7 billion
9 dollars the senior noteholders would not get a 100 percent
10 recovery, isn't that correct?

11 A. They would not receive a par plus accrued recovery they'd
12 get approximately 100 percent of par.

13 Q. And what percent of par plus accrued?

14 A. Some discounted par. I just don't remember exactly what
15 the number is.

16 Q. Going into the high eighties?

17 A. Probably high eighties, that would be my guess.

18 Q. So I want to compare apples to apples here. So I want to
19 just understand why you said 100 percent of par. You will
20 agree with me that the one thing that has not changed in any of
21 these analyses is that the senior noteholders are going to get
22 par plus accrued, right?

23 A. Under a negotiated TEV used among the parties to reach
24 agreement on a plan.

25 Q. Maybe I need further edification, and it's probably highly

1 likely, but as a matter of how the estate will make
2 distributions or how folks will recover, I understood that it
3 was always the case that the goal of the debtors was for the
4 senior noteholders to receive par plus accrued, is that correct
5 or not correct?

6 A. I wouldn't describe it as the goal of the debtors. This
7 plan reflects a settlement, a very complex and extensively
8 negotiated settlement. And the creditors can speak for
9 themselves about their goals. They represented themselves very
10 well, very forcefully. And part of the agreement was using a
11 TEV within a reasonable valuation range where unsecured
12 creditors would receive at that selected value used, because
13 you have to pick a point to complete your financial analysis.
14 And at that point within the range they would receive a par
15 plus accrued recovery.

16 Q. Okay. So the people at Skadden, you see, they produced
17 boxes and boxes of documents. And I looked at some of those
18 documents. And those documents typically showed all kinds of
19 term sheets and plans, and you'll agree with me that everything
20 that seemed to be published talked about par plus accrued,
21 right, for the bondholders?

22 A. That was a consistent position that they've taken in these
23 negotiations.

24 Q. Okay. So I'm going to ask you, for the rest of your
25 testimony, whenever you talk about the senior bondholders to

1 talk about par plus accrued and to talk about the numerical
2 values in relation to that consistent theme. In other words,
3 its confusing to me for you to say a 100 percent of par if
4 we're always talking about par plus accrued. So not 100
5 percent of the expected or the -- this plan proffers to this
6 Court, does it not, that the senior noteholders that negotiate
7 a TEV will be paid in full, yes?

8 A. Will receive a par plus accrued recovery.

9 Q. Right. And they won't be short?

10 A. I think what I said was fairly clear.

11 Q. Okay. But I'm asking another question.

12 A. I don't know what you mean by short.

13 Q. Okay. Fair enough. Let me explain what I mean by short.
14 That it won't be ninety-nine percent, ninety-eight percent,
15 ninety-three percent, it will be 100 percent, right?

16 A. The calculation of their recovery based on their claims at
17 the negotiated TEV is exactly par plus accrued.

18 Q. And that's important that there's a consequence, if you
19 understand, that flow from a representation to the Court that a
20 particular class of creditors has been satisfied fully. Do you
21 have an understanding about that or do you not have an
22 understanding?

23 A. Generally, yes.

24 Q. Okay. Now, when we were talking at your deposition about
25 the various valuation methodologies you testified, that one of

1 the things that you look at in preparing a valuation report is
2 the share price of companies that are comparable to the
3 business lines of Delphi. For one of the three methodologies
4 that you chose to use, correct?

5 A. Yes.

6 Q. Okay. And you said that you follow the share prices of
7 these comparable companies on a pretty regular basis, do you
8 recall that testimony?

9 A. Yes.

10 Q. Okay. And just so that it's very clear, when we talk
11 about comparable companies we're talking about you're comparing
12 comparable companies to divisions within Delphi, not to Delphi
13 as a whole?

14 A. Generally, yes.

15 Q. Okay. And that was something that you chose to do to try
16 to get a better tale or metric, is that right?

17 A. Yes.

18 Q. Now, you also testified, I think, that as a general
19 matter, depending on the magnitude, if comparable stocks fall
20 the valuation based on that methodology would obviously yield a
21 lower enterprise value, right?

22 A. Generally, yes.

23 Q. Okay. So when you say generally tell me the way in
24 which -- or tell the Court the ways in which it wouldn't do
25 that?

1 THE COURT: Are you getting somewhere with this.
2 This seems to me you can make this point at oral argument. I
3 got your point.

4 MR. MOUSTAKAS: Okay. Thanks, Your Honor.

5 Q. Well, just let me close out this whole line. It's fair to
6 say that you haven't conducted that analysis and haven't
7 determined what impact the market's current condition has on
8 your valuation, correct?

9 A. Correct.

10 Q. But you suspect it would show a decline in value, correct?

11 A. I think I testified that we watch regularly and I'll take
12 the comparable companies, and they are down some over the past
13 period from when we followed the last plan amendment. But we
14 have not updated the analysis.

15 Q. But you suspect that if you did it, it would show a
16 decline, correct?

17 MR. BUTLER: Objection. Asked and answered.

18 THE COURT: Sustained.

19 Q. Now, in your declaration you say that while the debtors
20 didn't take any affirmative steps to reach out to other
21 potential plan investors you also didn't receive any proposals
22 from investors, isn't that right?

23 A. At the time of my deposition that was true. But
24 subsequent to the deposition that's not true.

25 Q. Oh, I actually wasn't going there. Yeah, but that's

1 right. So tell the Court about that.

2 A. Approximately -- I don't remember the exact date but I
3 think it was before last weekend, Mr. Miller, the CEO received
4 a call which he informed me and other members of the advisory
5 team and management of -- from, the representative of Lehman
6 Brothers, who represented a group of investors, one of whom was
7 very familiar with the company, Highland Capital. That they
8 said they had a plan that they would like to present to the
9 board and they were going to share that with the unsecured
10 creditors' committee. Mr. Miller encouraged them to do so,
11 mentioned when we had a board meeting that was upcoming, and if
12 necessary to reach out to the debtors' professionals,
13 consistent with how we've handled those inquiries in the past.

14 Q. And did I say that there was a reference to Mr. Dagel
15 giving some information about a potential proposal as well?

16 A. I know that Mr. Dagel also had knowledge of this proposal,
17 had reviewed it, and my understanding is the creditors'
18 committee received a presentation on the proposal and took
19 action not to move forward with that proposal.

20 Q. Is that a different proposal than then Lehman Brothers
21 Group?

22 A. No. I believe that is the Lehman Brothers Group proposal.

23 Q. You said that the debtor was very familiar with Highland
24 and that's because Highland had been interested some time back
25 in participating in the debtors' plan of reorganization,

1 correct?

2 A. I'd say a little more strongly that Highland has spent
3 significant time, doing diligence, working with the debtor and
4 submitted a competing proposal that was very close in value in
5 terms to the current planned investor proposal. And ultimately
6 after considerable back and forth the board selected the plan
7 investors to move forward with and that agreement was approved
8 by the Court in August.

9 Q. Sure. And when in October the amended EPCA expired by its
10 own terms and negotiations with the plan investors, led by
11 Appaloosa, were showing that a considerable increase in
12 discounts and value was going to need to go to the plan
13 investors, did you, in your capacity as an advisor to the
14 company, to the debtors, did you contact Highland?

15 A. We did not contact Highland at that time. My colleague,
16 Mr. Shaw, actually had a contact from the representative of
17 Lehman Brothers, who has been working with Highland, wanting to
18 get an understanding of what was going on and represented to
19 Mr. Shaw they were not, at that time, prepared to move forward
20 with a competing proposal but might have an interest in
21 providing some exit financing and wanted to keep a dialogue
22 open.

23 Q. You didn't have those conversations, did you?

24 A. I did not.

25 Q. So it's fair to say that -- and it was -- did you mention

1 in your deposition Ripperwood, Ripperwell, or something like
2 that?

3 A. Rippelwood.

4 Q. Rippelwood. They had been interested as well, right?

5 A. Yes. They were one of the parties interested back around
6 the end of last year.

7 Q. Okay. And you didn't contact them, correct.

8 A. Correct.

9 Q. I know that these questions might come across as
10 accusatory, I don't mean them to be, so let me try to show you
11 that by asking you this question. Was there a perception among
12 the board or the management that this course of communicating
13 interest in competing proposals was somewhat perilous in light
14 of certain penalties in the EPCA?

15 A. I'm not sure I understand the question.

16 Q. Sure. There are certain breakup fees that get triggered
17 by various conduct that the company engages incorrect?

18 A. Yes.

19 Q. Okay. Were those -- did those play a role in decisions
20 about whether to solicit interest from competing or potentially
21 rival plan investors? Let me clarify, in the time period from
22 let's say October 29th to November 14th?

23 A. They were a consideration, but in my view -- the board has
24 been acutely sensitive from the beginning of this case to its
25 fiduciary obligations to all its stakeholders. And I think the

1 board took into account where Delphi was in its reorganization
2 process. And it was particularly sensitive to the fact that
3 each individual stakeholder wanted to receive the highest
4 possible recovery, that's natural and that's why they're each
5 individually represented. But the debtors' obligation was to
6 maximize the value of the estate. And I think the board was
7 very sensitive to many of the risks that the debtor would face
8 and potentially to maximizing value, its principal obligation
9 in a Chapter 11 if there was delay. And I think the board's
10 concerns was if there were other parties out there that hadn't
11 done diligence, that would allow us to go beyond a period of
12 time where risk would increase, such as with the PBGC, it's
13 unions, or with General Motors, they were also considerations
14 that they had to weigh carefully along with issues, such as a
15 breakup fee. And I think they did that and they did that
16 extensively, and thoughtfully in reaching their business
17 judgment in going ahead.

18 Q. The risks that you're talking about with respect to the
19 pensions and the unions and GM, those were risks that
20 throughout the process had to be managed by the board, correct?

21 A. Yes. And were managed to the point where there were
22 agreements with deadlines that expired, with the PBGC at the
23 end of February, with the unions at the end of March, with GM
24 at the end of March. Not to mention issues that the debtors
25 are always concerned about when its had a Chapter 11 of this

1 length with its customers and its employees.

2 Q. But it's fair to say that you testified that there were
3 not imminent customer issues as you investigated, there were
4 not imminent key employee issues implicated by delayed
5 emergence, correct?

6 A. Imminent as defined as something that I might be aware of.

7 Q. Okay. But you were in a position of advising the company
8 on all of these matters. And so I take it you were familiar
9 with most of these issues pretty thoroughly, right?

10 A. Some. But I think I mention in my deposition the heads of
11 the divisions were much more sensitive to customer issues. And
12 I had understood from discussions that they were concerned.
13 Generally, the company's been in Chapter 11 a long time, was
14 close to emerging, had achieved all of the goals it set out at
15 the beginning of the Chapter 11, and customers were concerned
16 when would it emerge, when would Delphi emerge.

17 Q. Right. And you testified just a moment ago that there
18 were deadlines that were coming up, and those were something
19 that caused them concerned, correct?

20 A. Yes.

21 Q. But there had been deadlines in the past that had been
22 renegotiated, correct?

23 A. Different ones, but yes.

24 Q. Were there deadlines in the past with respect to pensions
25 that got moved or renegotiated?

1 A. There were some agreements reached with the PBGC during
2 the case, I don't know remember if they were deadlines or just
3 statutory issues the company had to address.

4 Q. Okay. But its fair to say that in this process of
5 exercising business judgment and therefore considering all the
6 factors that go into the hopper, let's say, it's fair to say
7 that one of the things that didn't happen is the board didn't
8 go out to those constituencies and say, hey, listen we're
9 thinking about delay, will you give us a pass. That wasn't
10 something that you sort of investigated, that's fair to say,
11 right?

12 A. I think the board appreciated that these agreements with
13 GM, with the unions, took an extensive period of time to reach.
14 They were complex, highly contentious issues, and very balanced
15 nuance settlements. And once you spent the time and the effort
16 to reach them, to reopen the box to move them, I think in the
17 board's judgment, in my judgment, reflects considerable risks.
18 And the board would need to waive out carefully, which I
19 believe it did.

20 Q. Okay. You probably were in the Court for a preliminary
21 discussion about the admissibility of certain aspects of your
22 declaration, based on personal knowledge, at this point I do
23 want to ask you a question that sort of gets to that. You said
24 during your testimony a couple of times, and you certainly said
25 just now, that you think that the board has a view or other, is

1 that because you made a recommendation to the board that they
2 followed and you infer from that that they have that view?

3 A. I'm not sure about the specific case you're referring to.

4 Q. Okay. You just said that I think the board -- when I
5 asked you a question about whether the board considered the
6 possibility of staying in Chapter 11 long enough, and the
7 implication was to look at other investor possibilities, you
8 said you think that they considered that but didn't think it
9 was a wise thing to do. And I guess what I want to do is try
10 to understand the basis for you saying you think that that was
11 their view. Was it because they told you or was it because you
12 made a recommendation that they followed, you follow me?

13 A. I understand. I made that statement on the basis of
14 participating in board meetings or conference calls. I think
15 I've attended probably every one, maybe with one or two
16 exceptions. And the board addresses these issues in discussion
17 somewhat vigorously. And the question of staying in Chapter 11
18 longer was certainly raised in several of these conversations
19 and discussed with the board.

20 Q. Okay. I want to get to -- let's go straight to the
21 valuation and what you know about the valuation that the board
22 made of the restated amended EPCA. And I think when I use
23 restated amended EPCA, I think people have been talking about
24 the November 14th amendment, do you have that understanding as
25 well?

1 A. If that's how you'd like to refer to it, I just think its
2 simpler to use the date, November 14th.

3 Q. Okay. So let's do that. Now, we've established that
4 Rothschild didn't reach out to solicit interest for -- or to
5 solicit competing offers. And one of the things that I think
6 you said at your deposition was that this was a very public
7 bankruptcy and there were -- basically people knew where to
8 find us, right?

9 A. Yes. And in the past our experience was people have
10 reached out to us. And I think people knew that we engaged
11 with them readily, we thought they were credible and had the
12 financial wherewithal to be helpful in this case.

13 Q. But investment bankers are often hired to do this very
14 process, to find people who might be interested in making the
15 investment, right?

16 A. Which is what we did at the beginning of the case when we
17 first started the plan investor process.

18 Q. Did you personally, in giving advice to the board, see or
19 understand a watershed event having taken place after the
20 October 29th amendment couldn't be executed?

21 A. I'm not sure what you mean by watershed event.

22 Q. In other words, did you come to -- we've talked a little
23 bit earlier about whether you came to understand that in order
24 to close a deal in which the Appaloosa plan investors were
25 going to be involved you're going to have to transfer

1 significantly more value than you had been anticipating in
2 earlier versions of the plan in the EPCA, is that right?

3 A. Yes.

4 Q. So given that sort of however exponentially you want to
5 describe it, that change, the size of that change, the
6 significance of that change, did you see that as a watershed
7 event that might trigger your role as the finder, going out and
8 getting people who are interested in light of the facts that
9 the landscape could change significantly in light of what these
10 plan investors were looking for?

11 A. In my view, I've done restructuring work for almost twenty
12 years, that this is a very complicated case. And one lesson
13 that I've learned is in cases such as Delphi which are complex
14 multivariable equations, to keep all the pieces exactly where
15 they are is a tremendous challenge. And those pieces sometimes
16 fall out of place. I think it's happened a number of times in
17 this case and the parties have worked very hard to bring them
18 back. When you take a case like Delphi and you add on top of
19 that some of the most volatile financial markets that we've
20 seen in some time that adds additional uncertainty. So my view
21 was that this was another challenge we had to deal with. I
22 think we understood some of what was happening and that with
23 some time we could work and bring the deal back to essentially
24 what was agreed. And I think with some help from the Court,
25 after the hearing on the 14th, we were able to do that fairly

1 effectively.

2 Q. Okay. You were talking about sort of the pieces moving.
3 Is it fair to say, in your experience doing restructuring for
4 twenty-three years that there has to be almost necessarily a
5 bias in favor of the status quo because it doesn't upset those
6 various pieces and there's a cost associated in upsetting of
7 those various pieces, is that fair to say?

8 A. Absolutely not. And that wasn't what I was inferring.
9 I'm saying that having the experience of doing restructuring
10 work a long time gives you a sense of perspective in context to
11 make the important judgment and to advise you client on when
12 you might truly have a watershed event and need to change
13 course, which sometimes happen. It's a challenge, similar to
14 other challenges, that you just need to work perhaps a bit
15 harder to try to resolve, given where you are in the case.

16 Q. So without me trying to draw any inferences from what you
17 said, you didn't view this as a -- you didn't view this as a
18 watershed even having taken place?

19 A. I thought it was a challenge that with hard work among the
20 parties we could try to resolve.

21 Q. But not a watershed event?

22 THE COURT: You don't have to answer that.

23 A. Okay.

24 Q. Now, I want to ask you a little bit about, we talked about
25 this a little bit at your deposition, fairness opinions.

1 You're familiar with fairness opinions in your work as an
2 investment banker, correct?

3 A. Yes.

4 Q. Okay. And can you, for the record, concisely say what a
5 fairness opinion is?

6 A. In my experience in a merger and acquisition transaction
7 for public companies, most often, boards of directors often
8 request an opinion from an investment banker stating that the
9 transaction that the board would accept is fair from a
10 financial point of view, which is a technical term, but that's
11 what the fairness opinion states based on work that the
12 investment banker has done looking at the terms of the
13 transaction.

14 Q. So when you say it's a technical term, it's not the same
15 thing reasonable? Fair in financial terms is not necessarily
16 the same as saying reasonable, is that fair to say?

17 A. My point is just that fair is a term that bankers use in
18 opinions to mean it's always described as fair from a financial
19 point of view, it's not a general view of fair. That's it's a
20 good think for one group versus another. Like my son would say
21 that play was -- the umpire called was not fair, it's very
22 different. Or a creditor in a bankruptcy says I don't like
23 this recovery, it's not fair.

24 Q. So is the consequence of saying that a transaction is fair
25 that you're recommending that it be done?

1 A. No. The board asked for an opinion again on the financial
2 terms. And the board makes the judgment whether or not to go
3 forward with the transaction.

4 Q. You didn't do a fairness opinion in connection with your
5 work for the debtors in this case, correct?

6 A. No. Investment bankers don't, in my experience, do
7 fairness opinions in Chapter 11 cases because stakeholders have
8 a vote and there's also a judgment that addresses issues before
9 the Court that relate to major issues of value.

10 Q. Right. But you've been very clear about the board's
11 responsibilities during Chapter 11 proceedings. And you don't
12 mean by what you just said about the existence of the Court to
13 judge fairness to suggest, I want the record to be clear. You
14 don't mean to suggest that the board has a relaxed burden in
15 terms of making its own determinations about what's reasonable
16 and fair for the constituents that it has to be loyal to and
17 exercise it's fiduciary obligations in favor of, right?

18 MR. BUTLER: Objection. He's asking now for a legal
19 conclusion about the fiduciary responsibilities for the board
20 of directors, Your Honor.

21 MR. MOUSTAKAS: This witness has already testified
22 about the board --

23 THE COURT: I just don't know where you're going.

24 MR. MOUSTAKAS: Yeah. I guess I'm trying to
25 understand, Your Honor, if I might just make my proffer, I'm

1 trying to understand what obligation the board is having so
2 that I can understand and evaluate the information that he
3 provided. And specifically, what I'm trying to develop, I
4 think quite obviously, you know, whether he made an assessment
5 of the fairness of this as investment bankers would do in
6 another context.

7 THE COURT: He already said he didn't provide a
8 fairness opinion.

9 MR. MOUSTAKAS: But I'm hoping to follow-up on that
10 for a moment. Let me see if I can -- I'll move on.

11 THE COURT: Why don't you ask him what he did instead
12 of making false distinctions. All right. I've never seen a
13 fairness opinion in a case like this for the reasons Mr.
14 Resnick testified. So let's talk about what's real as opposed
15 to what you think might lead to a Perry Mason moment.

16 MR. MOUSTAKAS: Yeah. I can assure you, Judge, I'm
17 not looking for a Perry Mason moment.

18 THE COURT: Well, then get on with it.

19 MR. MOUSTAKAS: Okay.

20 BY MR. MOUSTAKAS:

21 Q. Did you think that the reason -- did you recommend the
22 offer on the basis of it being reasonable?

23 MR. BUTLER: Objection, vague, which offer.

24 MR. MOUSTAKAS: The offer we've been talking about.

25 THE COURT: Which one is that the December 3rd one

1 before the Court. The one before the Court, that's the only
2 one I'm considering.

3 MR. MOUSTAKAS: Your Honor, I don't mean to be
4 impertinent. I understood from debtors' pleading that they
5 were putting on evidence about the business judgment with
6 respect to the November --

7 THE COURT: No. That's not before me today.

8 MR. MOUSTAKAS: I understand.

9 THE COURT: Let's get on with it, just do what's
10 before me. I'm going to take a five-minute recess. Maybe you
11 can talk with Mr. Brilliant about what's before the Court in
12 the manner of bankruptcy law. I'll be back in five minutes.

13 (Recess from 11:56 a.m. to 12:04 p.m.)

14 (Audio starts mid-sentence)

15 A. Presentation to the board in connection with the November
16 14th proposal.

17 Q. Okay. You remember -- you say extensive. I just want to
18 see if I can refresh your recollection. You testified that
19 your presentation to the board was fifteen minutes, do you
20 remember that?

21 A. Yes. But we --

22 Q. And you remember that you couldn't remember any questions
23 that were asked by the board about that proposal, about that
24 EPCA?

25 A. I don't recall.

1 Q. Okay. Did you ever advise the board about the rate of
2 return that the plan investors enjoyed with respect to the
3 November 14th restated amendments?

4 A. And how do you define rate of return?

5 Q. How do you define rate of return, sir?

6 A. Well, rate of return -- my definition of rate of return
7 would be based on the price at which a party is investing in
8 this case and the equity or the preferred A or B, what is the
9 return that they expect to receive over a period of time that
10 they would hold the security, based on an assumed exit date,
11 price or valuation at that date of exit. And you calculate
12 that back and you get an internal rate of return.

13 Q. And did you make an assessment of what the plan investors
14 would expect to receive and -- let me just start with that
15 question?

16 A. Because we didn't necessarily know their full investment
17 price and we didn't know, because we don't represent the plan
18 investors, how long they might necessarily hold the security
19 and what assumptions they might use for the exit valuation,
20 what multiple they would expect to exit out for example.

21 Q. What -- did you consider doing it but found that you had
22 insufficient data to do it, or was it that you didn't consider
23 doing it?

24 A. It was an issue discussed but I think generally people are
25 aware that private equity funds, hedge funds, investing capital

1 expect rates of return that reflect the risk of their
2 investment. And because we spoke to a number of parties during
3 this process, and particularly with Highland in the summer,
4 where the proposals were essentially on top of one another,
5 that we were getting a very good sense that plan investors were
6 expecting similar returns for going forward and putting new
7 capital into Delphi.

8 Q. But the deal that you would have been comparing -- you
9 said on top of. The deal that you would have been comparing
10 Appaloosa's deal to the Highland deal, that was much earlier --
11 much earlier and different values, correct?

12 A. Yes.

13 Q. So you don't have a comparator of any sort for the
14 November 14th restated amendments, correct?

15 A. Yes.

16 Q. Okay. And you didn't give the board any advice about the
17 reasonableness of the preferred stock prices, those discounts,
18 did you? I'm just focusing on that right now, so answer that
19 question.

20 A. This is at November 14th?

21 Q. Correct.

22 A. For the November 14th proposal?

23 Q. Correct. We discussed the preferred stock discounts.
24 I think it was clear in the presentation that we distributed to
25 the board that they were higher than October 29 or September

1 6th, because we've consistently compared any amendment to all
2 previous amendments or the plan that was filed on the 6th. And
3 pointed out the differences, and the rational why, and how the
4 company tried to negotiate those discounts lower but was where
5 we ultimately reached agreement on the November 14th plan.

6 Q. Okay. When I use the term lockups do you have an
7 understanding what that means?

8 A. Yes.

9 Q. Okay. And so it's fair to say that the Appaloosa plan
10 investors had a number of devices to limit who could talk and
11 what they could say without triggering some penalties, is that
12 fair to say?

13 A. Generally, yes.

14 Q. Okay. And so you came to understand that there was a plan
15 investor agreement that committed co-plan investors not to take
16 any steps that would be viewed antagonistic to the current
17 plan, correct, at any time?

18 A. Generally. But as I said at my deposition I did not see
19 those agreements.

20 Q. Okay. And you understood that there was also an
21 additional investor agreement that had a similar effect,
22 correct?

23 A. Yes.

24 Q. Okay. And you understood that there was a provision of
25 the EPCA that related to changes of recommendation that had the

1 potential consequence of triggering an alternate transaction
2 fee, correct?

3 A. Yes.

4 Q. And you came to understand that Appaloosa did not take
5 those provisions lightly and that it was fairly aggressive in
6 enforcing them, correct?

7 A. I think I understood that they had negotiated certain
8 provisions and they were going to insist that parties who
9 signed those contracts abide by the terms of the agreement.

10 Q. I take it that you saw a number -- for example --

11 MR. MOUSTAKAS: Strike that.

12 Q. Focusing for a moment on restrictions that were imposed on
13 the debtors, you understood from review of certain e-mails that
14 debtor' counsel, Mr. Butler, and Mr. Sheehan, the Chief
15 Restructuring Officer, had communications with Mr. Tepper and
16 with Appaloosa concerning the ability to talk to other
17 stakeholders in order to fix the problem that arose when
18 Goldman refused to sign the October 29th agreement, correct?

19 A. Generally.

20 Q. Okay. So I guess to be clear about it Appaloosa made it
21 sort of difficult to talk to the same parties, you know, that
22 you were dealing with consistently on this plan and wanted to
23 have sort of a case by case discretion to decide whether to put
24 conversations in the so called Safe Harbor, are you familiar
25 with that?

1 A. I've heard that --

2 MR. BUTLER: Objection. There's two questions there.
3 And I just want to make sure he's a question about the Safe
4 Harbor or asking questions of the prior question.

5 THE COURT: Why don't you break them up.

6 MR. MOUSTAKAS: Sure.

7 Q. When I use the term Safe Harbor, it's someone else's term,
8 but you understand what we're referring to in this case when we
9 talk about Safe Harbor?

10 A. I think so.

11 Q. That certain conversations, by agreement of the parties
12 won't trigger one of these penalties, correct?

13 A. Yes.

14 Q. Okay. And you understood that Appaloosa was rigid about
15 requiring that agreements, with respect to these conversations,
16 happened before parties that have been dealing with one another
17 for quite a long time have conversations about ways in which
18 the terms could be negotiated or fixed to result in a new
19 amendment, correct?

20 A. I don't know if I would use the word rigid. I think they
21 insisted that the parties act according to the terms of the
22 agreement they had signed.

23 Q. Okay. I want to just go back because I just recall when
24 you were talking about the board a little bit earlier before we
25 moved into this -- these lockups. You said there was

1 discussion -- I thought you said there was discussion about
2 rates of return. What was the discussion? Were members asking
3 what the rate of return was for Appaloosa investors?

4 A. I don't recall.

5 Q. Okay. You don't recall that.

6 A. You ask the question and I'm not sure if I recall board
7 members.

8 Q. So when you said discussions were had when we're talking
9 about whether a presentation of the internal rate of return or
10 any other kind of return were made to the board, you said at
11 some point think there were discussions about rates of return,
12 do you remember saying that?

13 A. Yes.

14 Q. Okay. What were those discussions?

15 A. Those discussions occurred early in the process when the
16 company decided to go out and speak with parties about becoming
17 plan of investors. The board wanted to understand what would
18 be the basis, parties would put new capital into the company,
19 what were the expected returns, how would they -- how expensive
20 would that capital be and how it would affect the process. I
21 think what I said was at the board meeting relating to the
22 November 14th amendment we discussed with board members, and
23 parties asked questions regarding the discounts, that existed
24 on preferred A and preferred B stock.

25 Q. Now, do you recall --

1 MR. MOUSTAKAS: Strike that.

2 Q. Did Mr. Tepper and Mr. Boland ever have occasion to tell
3 you that they would not proceed with the August 3rd EPCA?

4 A. I don't remember them saying that.

5 Q. Okay. Do you remember testifying at a deposition on
6 November 25, 2007?

7 A. Yes.

8 MR. MOUSTAKAS: The Court's indulgence?

9 Q. If you can grab from behind you, sir, Exhibit Number 182?
10 Let me know when you've got that.

11 A. Do you know what volume it's in?

12 Q. I'm afraid that I don't. I understand that the volumes
13 might have shifted, I apologize for that. The debtors may know
14 that.

15 THE COURT: What volume is it?

16 THE WITNESS: It's in orange, Volume III. The orange
17 one at the top.

18 MR. MOUSTAKAS: And it's 182, Your Honor.

19 A. Okay. I have it.

20 Q. All right. Let's wait for the Court to get it. And now,
21 if you would turn to page --

22 THE COURT: Page what?

23 MR. MOUSTAKAS: 20. I'm sorry, yeah.

24 A. Page 20?

25 Q. Yes. Line 22.

1 "Q. In paragraph 12 of your November 2nd affidavit the first
2 sentence says as a result of the revised BBP projection,
3 including the reduced GM volume forecasts and the deterioration
4 of market conditions, the plan investors informed Delphi that
5 they were unwilling to proceed with their investment under the
6 terms of the Delphi-Appaloosa EPCA."

7 Q. Did I read that correctly?

8 A. Yes.

9 Q. And you understand the reference to the Delphi-Appaloosa
10 EPCA to be the August 3 EPCA?

11 A. Yes.

12 Q. Okay. And you answered yes, that's right, right?

13 A. Yes.

14 Q. And then, you see the next question asks:

15 "Q. Now, who told you that the plan investors would not
16 perceive?"

17 Q. Did I read that question correctly?

18 A. Yes.

19 Q. And you answered that question. And why don't you read
20 your answer into the record?

21 A. "Mr. Tepper and Mr. Boland."

22 Q. Okay. So does that refresh your recollection that you
23 actually at a time, previous to today, testified that you
24 learned that the plan investors would not go forward on the
25 August 3rd EPCA from Mr. Tepper and Mr. Boland, who I take it

1 are principals at Appaloosa?

2 A. Yes.

3 Q. Okay. Now --

4 MR. MOUSTAKAS: I'm sorry, Your Honor. I'm skipping
5 ahead to move, I'm trying to cut out a bunch of stuff. If
6 you'd give me a moment?

7 Q. Now, notwithstanding the fact that Mr. Tepper and Mr.
8 Boland informed you that because of these factors they would
9 not be able to proceed -- the plan investors would not be able
10 to proceed with funding the plan pursuant to the August 3rd
11 EPCA. Let's take that as a backdrop to the next question.
12 What I just said is correct, right?

13 A. Yes, that's correct.

14 Q. So flash forward to early November after there's been a
15 determination that Goldman cannot proceed on the October 29th
16 amendments, okay. Now, after that happens do you recall that
17 Appaloosa files a Form 13B with the SEC?

18 A. I don't recall.

19 Q. Okay. Were you aware that Appaloosa made a public
20 statement that -- concerning the expiration of the October 29th
21 amendments?

22 A. Yes.

23 Q. Okay. And shortly after that you're also aware that a
24 determination was made at the debtors to issues a press
25 release, correct?

1 A. Correct.

2 Q. And that press release described, among other things, what
3 happened with respect to the October 29th amendments, correct?

4 A. Yes.

5 Q. And it also said that -- indicated that the August 3 EPCA
6 was still in force and effect, correct?

7 A. Yes. Because certain conditions, in their view, they did
8 not believe had been satisfied.

9 Q. And some of those conditions were historical, they weren't
10 going debt satisfied, they're related to historical events,
11 correct?

12 A. I believe they related to the ability of the plan
13 investors as was set forth in the original agreement to review
14 the settlements with general motors, a new business plan which
15 the debtors provided, and also had required their reasonable
16 approval on terms of financing.

17 Q. Okay. So you would agree with me that one consequence of
18 announcing publicly that the August 3 EPCA was still in force
19 and effect would be to depress -- potentially depress interest
20 in potential rivals? In other words, it would be less likely
21 that someone would see the debtor potentially in place, is that
22 fair?

23 A. I don't agree with that.

24 Q. Do you agree with one possible consequence of making this
25 announcement that the EPCA was still in place and the parties

1 were operating under it? Do you agree that one consequence
2 from that was that the lock up provisions that we've described,
3 both with respect to the plan investors the additional
4 investors with respect to Delphi itself -- that the debtors
5 themselves could do and say those remained in effect, didn't
6 they?

7 A. My understanding is the lockup increments would remain in
8 effect for some period even if the EPCA was terminated.

9 Q. And what was that period?

10 A. I don't recall.

11 Q. So you don't know if it was a short period or long period?

12 A. I just don't remember what the period is.

13 Q. And one consequence of announcing that the EPCA was still
14 in force and effect was that people looking inside, looking
15 from the outside would understand, reasonably understand that
16 Appaloosa still had the inside track with respect to funding
17 the plan of reorganization, correct?

18 A. Well, the agreement has certain provisions in it that
19 would require, as is customary, a breakup fee to be paid if the
20 debtor changed its recommendations. And the board retained its
21 fiduciary obligation if there were any better proposals to
22 pursue them. So I think what existed is somewhat consistent
23 with what you see in most large complicated deals where party
24 invest considerable time, effort and resources to negotiate.

25 Q. Between October 29th and November 14th the debtor didn't

1 do anything to indicate to the market that it had an interest
2 in receiving competing proposals, correct?

3 A. Other than it's action during the pendency of this case,
4 where it has responded to parties, and when, in the beginning,
5 it went out and solicited interest.

6 Q. Right. Let me try to say this in a different way and
7 maybe short circuit a lot of this. I'm want you to try to
8 compare two scenarios. One scenario is the October 29th
9 amendments are dead and the market learns that the August 3rd
10 EPCA is a dead letter, it doesn't exist, it's been terminated.
11 Let's take the easiest thing, it's been terminated. When you
12 compare that to the state of affairs that actually happened in
13 this case, which was that the company went out and said to the
14 market, hey, we're still operating under an EPCA, we're going
15 forward on the August 3rd EPCA, you would agree with me that as
16 between those two things the former, which is saying the EPCA
17 is terminated or no longer vital would have the effect of
18 increasing interest and among people who might be interested in
19 contesting Appaloosa's role as the plan investor, fair?

20 A. I'm not so sure I would agree with that. Because I think
21 what you're trying to do is look in isolation at one particular
22 variable in a very complicated case. And one of the benefits
23 of having the EPCA remain in place is a signal to customers,
24 employees, the market that while there are issues with the
25 original EPCA there are parties in place that remain interested

1 in providing capital and the parties are trying to address the
2 conditions that couldn't be satisfied in some negotiated way,
3 fairly typical. To toss that out the window has implications.
4 And I think the board carefully considered that and the risks
5 inherent in that. Parties could approach the debtor if there
6 was interest and I think the debtor has always indicated a
7 willingness to look at those proposals. It did so as recently
8 as a week ago. And nothing that exists right now stopped a
9 party from coming to the debtor, the debtor having discussions,
10 the creditors' committee having discussions and engaging.

11 Q. Let me ask you this. Do you think the obligation of the
12 board to become more or less aggressive without seek additional
13 proposals modulates depending on the strength of the proposal
14 that is in front of it, that's trying to execute on? In other
15 words, if you have a really good proposal you've got a lower
16 obligation because you're acting reasonably as opposed to
17 having a very poor proposal your obligation sort of ratchets
18 up, is that fair to say?

19 A. I think the obligation of the board is --

20 Q. I'm sorry, I just want you to answer my question. You'll
21 be able on redirect to say other things. But I do want an
22 answer to that question if you might.

23 A. I just don't think it's that simple.

24 Q. Okay. So when you isolate that one variable, and I asked
25 you about that one variable, are you willing to give me an

1 answer or you can say I'm not willing to give you an answer,
2 that's fine?

3 A. I just don't think in a case of this complexity you can
4 look at it that simply.

5 Q. Okay. Why don't you -- why don't you turn -- I'm sorry,
6 again, I'm hoping it's volume III of the highly confidential
7 documents, but I don't know that it is. Exhibit 151, if you
8 can just turn to that?

9 MR. BUTLER: While you're doing that I just have a
10 question. We've been at this almost a couple of hours. Mr.
11 Resnick does have some scheduling conflicts. I'm just
12 wondering if counsel --

13 MR. MOUSTAKAS: I don't think I have more than five
14 minutes.

15 MR. BUTLER: Okay.

16 Q. Let me know when you've got that in front of you, sir?

17 A. 1 to 51?

18 Q. 1 to 51.

19 A. It's an e-mail?

20 Q. It is.

21 MR. MOUSTAKAS: Your Honor, do you have that?

22 THE COURT: Yes.

23 MR. MOUSTAKAS: Okay.

24 Q. Why don't you read from the e-mail from Norma Courio
25 (ph.), are you familiar with that person?

1 A. Yes.

2 Q. Who is Norma Courio?

3 A. She's one of the senior bankers at JPMorgan involved with
4 their DIP and exit financing practice.

5 Q. So can you read the e-mail?

6 A. "I guess it depends on what is meant by the word
7 constructively" --

8 Q. I'm sorry. You understand that the e-mail from Norma
9 Courio is the first e-mail even though it appears below the
10 first e-mail? You see based on the dates and times?

11 A. So -- I'm sorry, what e-mail are you asking me to read?

12 Q. The one that says from Norma Courio.

13 A. Okay. To John Sheehan?

14 Q. Yeah, you've got it.

15 A. Okay. "John, will do. Is it okay for us to say that
16 Appaloosa is still working constructively with you to revise
17 the deal? Norma."

18 Q. And now would you read the e-mail response from Mr.
19 Sheehan?

20 A. "Spread the word, Delphi's EPCA has not been terminated.
21 John."

22 Q. Okay. Again, I'm sorry, I wasn't clear enough. That is
23 not the responsive e-mail, the responsive e-mail is the e-mail
24 on top. So when I say responsive I mean the e-mail in which
25 Sheehan responds to Courio, not Courio responded to Sheehan's

1 first e-mail. So if you could read the top e-mail, it starts
2 with I guess?

3 A. The one I started to read?

4 Q. Right.

5 A. "I guess it depends upon what is meant by the word
6 'constructively.' They're the only game in town in a financial
7 market that can only be characterized as fragile. They have
8 established terms under which they are willing to invest.
9 They're expensive and GM will have to come to our conclusion
10 that we have no choice. The statutory committees will hate it
11 but it is where we are."

12 Q. Let me ask you a question about that portion of the e-
13 mail. First of all, have you ever seen this e-mail before?

14 A. No.

15 Q. Are you familiar with that sentiment coming out of Mr.
16 Sheehan?

17 A. I think he was reflecting how he felt at that time, I
18 assume. You can ask him.

19 Q. And that's on November 9th, right?

20 A. Yes.

21 Q. Okay. Now, we talked about the fact that there was this
22 EPCA -- the August EPCA, and you'll agree with me that there
23 was essentially, just as the ink was drying Appaloosa raised
24 the question of modifying the EPCA, isn't that fair to say?

25 A. I don't think that's fair to say.

1 Q. Okay. So you don't think that there's an August 3rd
2 letter from Appaloosa that talks about making modifications to
3 the EPCA that had just been entered? You don't think that
4 that's the case, is that your testimony?

5 A. My recollection is that around the time -- I couldn't
6 remember the exact date, Appaloosa received some of the
7 documents that they needed to review to address the conditions
8 that existed. The GM settlement agreement, the revised
9 business plan, and the debtors' proposal on how it would
10 arrange exit financing. And my recollection is after reviewing
11 those items Appaloosa came back, and I think I testified in my
12 deposition and said, they had concerns about moving forward
13 with the original EPCA.

14 Q. All right. So you remember there was a September 10th,
15 two or three page memo that laid out all the sort of open
16 issues from Appaloosa's perspective, you remember that?

17 A. Not offhand. I know there was correspondence or e-mails
18 back and forth --

19 Q. But you don't remember anything from early August that
20 indicated they were looking to make modifications, is that your
21 testimony?

22 A. I don't recall.

23 Q. Okay. But you have testified that it became clear that
24 there were conditions that were not going to be satisfied as a
25 result that the August 3rd EPCA was not going to get -- was not

1 going to become operative, right?

2 A. Unless the parties agreed to changes.

3 Q. Okay. And so they tried to do that and that was the
4 October 29th amendments. And those had some conditionality
5 which came to pass and caused that set of amendments to expire
6 as well, correct?

7 A. Yes.

8 Q. And so as a practical matter, in early November, you kind
9 of had to iterations that both failed. It was true that as a
10 technical matter August 3rd was still in place but that wasn't
11 going to be the EPCA that you were going forward on without
12 changes, correct?

13 A. I think the issue on November 14th was not having support
14 of the other stakeholders and that's what we went back to
15 address.

16 Q. Right. Because it was easy to have the plan investors
17 support, because as Mr. Sheehan reflected in that e-mail we
18 just read they were very expensive and were getting very
19 expensive terms, right? So of course, they didn't complain,
20 right?

21 A. They were getting terms that were negotiated among
22 themselves, GM and Delphi.

23 Q. Do you not agree that those were expensive terms? Do you
24 know agree with Mr. Sheehan's characterization that they're
25 very expensive or that they're expensive?

1 A. I think that we said and I believe I testified that we
2 thought the discounts were very high compared to what was
3 agreed in October 29th. And we tried to negotiate to reduce
4 them.

5 Q. Are you aware that even in the November 14th EPCA and
6 presumably in the newest amendments, there are additional
7 conditionality with respect to interest rate caps, is that
8 correct?

9 A. Yes.

10 Q. You understand -- and you understand that was an issue for
11 the unsecured creditors' committee, correct?

12 A. Yes.

13 Q. And you understand that that CAP is 585 million dollars,
14 correct?

15 A. Correct.

16 Q. And you understand that a number of banks have come back
17 and said -- have expressed annual interest expenses that
18 reflect the use of flex, that take the costs over 585, correct?

19 A. I haven't seen any particular presentation --

20 Q. Okay.

21 A. -- of --

22 Q. If you'd get Exhibit 37?

23 A. Confidential or not?

24 Q. I bet it is. And within that document I'm going to direct
25 your attention -- you can look at --

1 A. I don't --

2 Q. I'm sorry.

3 THE COURT: It's volume I

4 A. What was the exhibit number?

5 Q. It was 37. Volume 1 of the orange tab.

6 A. Okay.

7 Q. I'm sorry, I don't seem to have it. If you would turn to

8 page -- the page marked with the Bates stamped number

9 DPH2EAA0000224, so ending in 224, that's the easiest way to say
10 that?

11 A. Okay.

12 Q. You found that?

13 A. Yes.

14 Q. And that's entitled Exit Financing Lender Matrix, right?

15 A. Yes.

16 Q. And do you understand -- you can look back at the first

17 page of this, but do you understand that this was part of a

18 proposal to the board or a pres -- I'm sorry, a presentation to
19 the board?

20 A. Yes. On October 24th.

21 Q. Okay. And turning your attention to the line 1, 2, 3, --

22 maybe four or five lines from the bottom, my eyes are really

23 not seeing this, but I think I remember the numbers well

24 enough. There's a line of total interest with flex, do you see
25 that line?

1 A. Yes.

2 Q. And do you see with respect -- and do you see at the top,
3 along the top, there are various lenders, can you see that?

4 A. Yes.

5 Q. And do you see that the first lender -- I can't read it,
6 it's blacked out on my Xerox copy, they're at -- is that 647.7?

7 A. It's hard for me to read as well. But it looks that way.

8 Q. Okay. And if you go across the next one is 38.4 or
9 something to that -- if you just sort of scan across you'll
10 notice that the majority of these indicate interest expenses
11 beyond the cap that has been set in the most recent EPCAs, is
12 that fair to say?

13 A. That's what the numbers say.

14 Q. And that is a concern that some -- certain constituencies
15 have had, correct?

16 A. Yes. But these numbers also, I think it's worth noting,
17 bill in the full flex, this was in October proposal, I'm
18 familiar with it now. I thought you met currently as of recent
19 discussions. And the lenders agreed to go out with a best
20 efforts underwriting at slightly different terms than what's
21 reflected in the full flex numbers here.

22 Q. Right. Am I right to understand in layman's terms full
23 flex basically means giving them flexibility up to this amount
24 to try to indicate the financing, right?

25 A. Well, in this case it reflected flex that I think the

1 lenders would say was much broader than what they would
2 normally use given the volatility of the markets. And that's
3 one of the reasons why the debtors decided not to go forward
4 with a committed deal, because the flex was so wide. None of
5 the lenders wanted to take a risk in today's market to give a
6 more traditional commitment with much narrower flex. So what
7 we were evaluating here was very wide flex.

8 Q. Okay. Is it fair to say that the cap is set -- who set
9 the cap?

10 A. I believe that was negotiated among the plan investors,
11 the company, with some input from some of the other
12 stakeholders.

13 Q. When you use the term negotiate is it fair to infer into
14 that that comment by -- or the implication and comment by Mr.
15 Sheehan that the negotiating position of the debtors is
16 diminished?

17 A. I think it depends on -- you have to look at the issue
18 here. I think all stakeholders did have some alignment of
19 interest to have leverage at certain levels when the company
20 exited bankruptcy and interest expense that would fit into a
21 reasonable amount, such that the operating performance of the
22 company post-reorganization could cover that interest expense.
23 So some people who weren't going to hold equity might be more
24 flexible. But in this case the unsecured creditors, the equity
25 committee, the plan investors all were going to be having

1 substantial stakes in the company through their equity
2 ownership. And therefore it would be sensitive to how much
3 interest and how much debt the company would carry.

4 Q. Right. And I guess I wasn't trying to focus on why
5 someone might want to do that. But you'd agree with me that
6 Appaloosa had a big hand in determining what that cap ought to
7 be, correct?

8 A. Yes. They had certainly a significant voice in that
9 discussion. Right.

10 Q. And do you know what the unsecured creditors wanted the
11 cap to be?

12 A. At what time?

13 Q. Most recently. There was an objection today, wasn't
14 there?

15 A. Yes.

16 Q. What's that pending objection ask for?

17 A. It's higher than the current amount. I just don't
18 remember the exact number.

19 Q. Does 625 sound in the ballpark?

20 A. That's sounds right.

21 Q. And are you aware of whether -- are you aware of whether
22 some interest expense calculations with respect to the most
23 recent amendments has been generated that shows hypothetical
24 total interest expenses with respect to JPM and Citibank in the
25 case of -- that exceed the 585 million dollar cap, are you

1 familiar with anything like that?

2 A. I haven't seen --

3 Q. So you haven't been paying attention to the sort of
4 interest rate cap issue in more recently?

5 A. I don't think that's what I said. I said I haven't seen
6 your exhibit. I didn't say I haven't been paying attention to
7 it.

8 Q. Okay. Well, let me ask you are you familiar with the
9 rates at which there is an expectation funding exit financing
10 to take place?

11 A. Yes.

12 Q. And are you familiar with the fact that some of those
13 estimates show annual interest expense exceeding the cap of
14 585?

15 A. At the current time, yes.

16 Q. Okay. And if interest rates get worse, it will even be
17 worse, right?

18 A. That's correct.

19 Q. So -- and you understand that the consequence of that is
20 that when that happens Appaloosa will again be entitled to try
21 to renegotiate the EPCA, correct?

22 A. Will have a condition that might not be satisfied and
23 they'd have to waive or the company would assess it's cash flow
24 and determine how much it has to borrow. That's obviously
25 another way to come within a cap, is to borrow less.

1 Q. Right. But that didn't work with respect to the August
2 3rd EPCA, right, because there's 7.1 billion and we're going to
3 out and get 5.2, and don't you recall that Appaloosa's position
4 was condition failed, we get to get out, you remember that?

5 A. Right. But the -- the issue here is over the -- meaning
6 the interest expense cap not the aggregate amount of debt
7 borrowed.

8 Q. Fair enough. But you agree with me that if the interest
9 expense is exceeded Appaloosa will be able to walk away from
10 its obligation to fund the plan, correct.

11 A. I know the condition on the EPCA wouldn't be satisfied and
12 then we'd have to have a discussion about on what basis
13 might they be willing to waive that condition.

14 Q. No. I understand that but --

15 THE COURT: You don't need to ask again.

16 MR. MOUSTAKAS: Thank you. Thank you, Your Honor.
17 If I may just consult with my colleagues one moment, I think
18 I'm done.

19 THE COURT: Okay.

20 MR. MOUSTAKAS: Your Honor, I'm through.

21 THE COURT: Okay. Do you have any questions, Mr.
22 Fox?

23 MR. FOX: Yes, just very few, Your Honor.

24 THE COURT: Okay.

25 MR. FOX: Before I do that I just wanted to confirm

1 on the record that there's no objection to the admission of Mr.
2 Resnick's deposition transcript which is 182.

3 THE COURT: I thought all these exhibits in the
4 binder were agreed to. The admissibility was agreed to.

5 MR. MOUSTAKAS: No. We didn't object to those --

6 MR. FOX: I just want to be sure there's no objection
7 and I could just ask very few questions.

8 THE COURT: Okay.

9 MR. BUTLER: Your Honor, at some point before I close
10 the record we'll go through the exhibits.

11 THE COURT: All right.

12 THE WITNESS: Is that in the confidential?

13 MR. FOX: No, you don't have to look at it.

14 THE WITNESS: Thank you.

15 MR. FOX: I just want to let you leave.

16 THE WITNESS: Appreciate it.

17 CROSS EXAMINATION BY

18 MR. FOX:

19 Q. Mr. Resnick, at the outset of your cross examination you
20 talked a little about the chart that was marked as Exhibit 108,
21 you don't have to look at it I just want to remind you of it.
22 And you made reference to trading prices in the market being an
23 element of value, do you recall that?

24 A. An indicator of value.

25 Q. An indicator of value. Okay. Now, you understand that

1 Delphi has two million dollars worth of senior debt
2 outstanding?

3 A. Yes.

4 Q. Now, if you look at the prices of the senior debt in the
5 market what sort of indication are they going to give of value?

6 A. At a particular point in time you can use those prices to
7 imply -- I mentioned earlier, the enterprise value based on
8 looking at the recovery those stakeholders would receive under
9 the plan of reorganization.

10 Q. Now, if all other things being equal you divert -- and if
11 the enterprise value does not change, if you divert some of the
12 enterprise value away from the bondholders recovery to some
13 other area of the capital structure, and assuming the market is
14 aware of that -- of that proposal, you would expect that the
15 bond prices would drop, correct?

16 A. When you say if you divert some of the -- I'm not sure I
17 understand what the enterprise value is, what you're referring
18 to?

19 Q. If you have an EPCA on August 2 which provides for a
20 certain amount of value to the plan investors, and then
21 thereafter you have to increase the amount of value that is
22 going to be provided to those investors in order to get them to
23 continue to make the same amount of monetary contribution to
24 the debtors, you'd be diverting -- you'd be taking some
25 additional enterprise value that might otherwise be available

1 to pay the senior debt and be diverted out to the plan
2 investors, you understand that?

3 A. I understand the question but I think it's a little apple
4 and oranges. As you know, this plan was based on an agreed
5 total enterprise value and that's -- that drove parties'
6 recovery. So I'm not sure I understand what you're taking away
7 and from whom and under what -- what's your constant view of
8 enterprise value.

9 Q. Well, the intrinsic enterprise value doesn't change
10 because the parties all agree that it's a different number
11 today than it was yesterday, correct?

12 A. Right.

13 Q. And the market place -- investors in the market place
14 aren't party to this agreement as to what the enterprise value
15 is, correct?

16 A. Right.

17 Q. So they're trading based on what they believe is the
18 intrinsic value rather than what they believe is a negotiated
19 value, correct?

20 A. Well, they're trading on what they believe the value is.
21 I'm not sure I understand what you mean by intrinsic value.
22 They are trading because they have a need to buy or sell for
23 whatever reason. They need to.

24 Q. They're trading on their perception of the value -- of the
25 enterprise value of the company, rather than what the

1 creditors' committee and the debtors may have agreed is the
2 value of the company, correct?

3 A. Right. Their desire -- they just need to raise cash and
4 they have to sell a bond. Sometimes that's why people trade.

5 Q. But assuming that they didn't have that problem, assuming
6 that they're trading solely based on their perceived value of
7 the company, if some portion of the enterprise value is -- or
8 some additional portion of the enterprise value is now being
9 promised to some other part of the capital structure, be it the
10 MDL plaintiffs or be it the subordinated debt or be it an
11 additional amount of value going to Appaloosa in return for its
12 cash contribution, you would anticipate if the market's aware
13 of that, that bondholders -- or that people in the marketplace
14 would pay less for the bonds once they hear about that and they
15 would have been willing to pay before that transaction is
16 proposed assuming no other changes?

17 A. Or no other reason why they might trade.

18 Q. Okay. And assuming all the reasons why they might trade,
19 exactly?

20 A. That might be the case but you would have expected then
21 the bonds to have gone up after the December 3rd agreement was
22 filed, because we took value away from some of the parties you
23 mentioned and gave it back to other people and the bonds didn't
24 trade up, which you would expect would occur under your
25 hypothetical.

1 Q. Assuming, though, the marketplace agreed with your
2 analysis as to the change in valuation, correct?

3 A. But we didn't change your valuation.

4 Q. The change --

5 MR. FOX: All right. I'll strike that.

6 Q. Are you aware that after the September 6th -- or
7 immediately after the September 6th -- immediately after the
8 plan was filed on September 6th that the senior debt was
9 trading at about ninety-five?

10 A. Sounds about --

11 THE COURT: Mr. Resnick, who has more information
12 about this company, the creditors' committee, the equity
13 committee or people trading in the marketplace without having
14 signed confidentiality agreements?

15 THE WITNESS: The creditors' committee and equity
16 committee, General Motors, by far, Your Honor.

17 THE COURT: I think you can make all the arguments
18 you want about the market, whatever that is. Let me just ask
19 Mr. Resnick on the data here, is there any indication on this
20 exhibit how heavily traded these securities are?

21 THE WITNESS: We do not have the volume data all in
22 there, Your Honor.

23 THE COURT: Is there any indication -- does this
24 reflect shorts?

25 THE WITNESS: It certainly could. That was my point

1 to Mr. Fox earlier.

2 THE COURT: No, but does it --

3 THE WITNESS: Oh, does it reflect --

4 THE COURT: Does trading price reflect shorts?

5 THE WITNESS: I'm not sure, Your Honor. It's a
6 compilation of trading prices that we get from various sources.

7 THE COURT: Okay.

8 MR. FOX: Just one more question, Your Honor.

9 BY MR. FOX:

10 Q. Do you know what the value -- what the senior debt was
11 trading at yesterday?

12 A. I think I mentioned in the high fifties.

13 Q. Thank you.

14 THE COURT: Any redirect?

15 MR. BUTLER: We have no redirect, Your Honor.

16 THE COURT: Mr. Resnick, I have a question. On the
17 interest rate cap issue or the interest expense cap issue, that
18 you spent some time talking about, do you have any sense what
19 the economic effect on the equity the reorganized securities --
20 the reorganized equity would be of an increase of the interest
21 rate expense to the number that the creditors' committee has
22 suggested would be appropriate?

23 THE WITNESS: The differential, Your Honor, between
24 625 and 585 of both annual interest expense for a company this
25 size is relatively small.

1 THE COURT: On the effect -- on the value of the
2 equity.

3 THE WITNESS: It will theoretically have some impact
4 because debt -- well, the debt would be the same, the interest
5 expense will be slightly higher, it will make the company's
6 cash flow a bit less because of more interest expense. So
7 theoretically it should have some small impact, but that
8 differential I don't think is that huge.

9 THE COURT: Is that like in the range of one or two
10 percent or is it in the range of ten and fifteen percent?

11 THE WITNESS: I think closer to the one to two
12 percent. The concern is over given the automotive industry
13 prospects for next year. Parties would rather have less
14 interest expense and more cash flow.

15 THE COURT: The two lead parties who have undertaken
16 their best efforts to raise the financing, neither of those
17 parties are involved in the EPCA, are they?

18 THE WITNESS: My understanding, Your Honor, is that
19 some part of JPMorgan is a participant in some portion of the
20 plan investor group, because --

21 THE COURT: What do you view as the risk that either
22 through that relationship or just through general market
23 relationships that the perspective lenders might have with the
24 perspective investors, the EPCA investors, that they could
25 artificially create a default, if you will, on this issue in

1 connection with the financing?

2 THE WITNESS: I wouldn't view that as a very high
3 risk. I mean, the parties are sophisticated. I think we have
4 a number of people in this case that understand the financial
5 markets and watch them closely. I mean, the Chair of the
6 creditors' committee and his firm are very significant
7 financial institution and knowledgeable about the markets. And
8 I think people have a pretty good sense of where the market is.

9 THE COURT: Okay. Any other questions? All right,
10 you can step down.

11 THE WITNESS: Thank you, Your Honor.

12 MR. BUTLER: Your Honor, may Mr. Resnick be excused?

13 THE COURT: Yes.

14 MR. BUTLER: Thank you. Your Honor, the other
15 logistic issue that we were going to take out -- but present
16 now would be Mr. Tepper's testimony. I don't know what the
17 Court wants to do with lunch, is it possible to take that
18 before lunch, or does the Court want to take lunch now. What's
19 your pleasure?

20 THE COURT: As far as cross examining Mr. Tepper, how
21 long do you think that would be?

22 MR. BRILLIANT: I think an hour.

23 THE COURT: All right. I'll break for lunch now.
24 But before we begin, and particularly in light of the questions
25 that have been asked regarding trading prices and the like, I

1 have determined that it's incumbent upon the group, represented
2 by Goodwin Procter, to represent to me the aggregate holdings
3 that they hold, whether they have any shorts and the degrees --
4 I'm sorry, the places in the capital structure where those
5 holdings are -- in the aggregate.

6 MR. BRILLIANT: Your Honor, we have filed 2019
7 statement where we have given to the trading history of our
8 clients and what they own all across the capital structure of
9 the company.

10 THE COURT: Okay. Good. All right. So we'll come
11 back at a quarter of 2.

12 MR. BUTLER: Thank you, Your Honor.

13 (Recess from 12:57 p.m. to 1:53 p.m.)

14 THE COURT: Okay. We're back on the record in
15 Delphi. And I believe you were going to call Mr. Tepper.

16 MR. BUTLER: Yes, Your Honor. Good afternoon, Jack
17 Butler again, from Skadden on behalf of the debtors at this
18 omnibus hearing -- not omnibus hearing, regarding the EPCA and
19 disclosure statement. Your Honor, the declaration that we now
20 seek to move into evidence is Exhibit 203 in the joint binders.
21 This is the declaration of David Tepper, who we would present
22 to the Court for cross examination and questions by the Court.

23 THE COURT: Okay.

24 MR. BUTLER: Exhibit 203, this is highly
25 confidential, it would be in the orange labeled binder,

1 probably number 4.

2 THE COURT: Okay. Is there any objection to the
3 admission of this declaration as Mr. Teppner's direct? Okay.
4 All right. Does anyone wish to cross examine Mr. Teppner?
5 Okay. Come up, please, to the witness stand.

6 (Declarations of David Teppner was hereby received as Debtors'
7 Exhibit 3 and 4 for identification, as of this date.)

8 (Witness is sworn)

9 THE COURT: For the record, will you spell your name?

10 THE WITNESS: Spell? David, D-A-V-I-D, Allen,
11 Teppner, T-E-P-P-E-R.

12 THE COURT: Okay. Thank you. Okay. You can go
13 ahead.

14 MR. MOUSTAKAS: Thank you, Your Honor.

15 CROSS EXAMINATION BY

16 MR. MOUSTAKAS:

17 Q. Good afternoon, sir.

18 A. Good afternoon.

19 Q. Appaloosa owns -- let me start by saying from time to time
20 I may say you and when I say you it's obvious I mean Appaloosa.
21 And when I may say Appaloosa what I mean is the plan investors.
22 So if you have a question about my usage please stop me and
23 I'll try to be as precise as possible. I won't use ABAH, I'll
24 use Appaloosa for that, okay.

25 A. Okay.

1 Q. Appaloosa owns about twenty-five percent of the toppers
2 outstanding, correct?

3 A. Yep.

4 Q. And when I say that we mean by the Delphi trust at issue,
5 right?

6 A. Yes.

7 Q. And you understand that those toppers are contractually
8 subordinated to the senior notes, correct?

9 A. Yes.

10 Q. Appaloosa also owns, or has an equity position in Delphi,
11 isn't that correct?

12 A. Yes.

13 Q. Do you know what percentage of the outstanding equity
14 Appaloosa currently holds?

15 A. Not exactly.

16 Q. Roughly?

17 A. Nine percent -- eight/nine or ten percent, something of
18 that sort.

19 Q. Appaloosa also holds senior notes, correct?

20 A. Yes.

21 Q. And that's at about four/four and a half percent, correct?

22 A. Yes.

23 Q. Now, in connection with the November 4 restated amendments
24 to the EPCA do you have in your head a rough number for what
25 Appaloosa's equity position would be in the post-emergence

1 Delphi?

2 MR. BUTLER: Objection. Counsel, referred to a
3 November 4 --

4 MR. MOUSTAKAS: 4 -- I'm sorry. I stand corrected
5 14th stated amended -- restated amended.

6 A. You asking a dollar amount or are you asking in
7 percentage?

8 Q. Percentage?

9 A. I suspect it depends if we get hit by the backstop or not.

10 Q. Assuming you don't get hit by the backstop?

11 A. Assuming that we don't get hit by the backstop, I guess --
12 and you mean -- how do you want me to treat the warrants that
13 we'll be getting?

14 Q. Well, I guess tell me with or without?

15 A. So assuming nothing -- I guess if we get hit by the
16 backstop I guess we'll probably be about fifteen percent or
17 something in that sort. I haven't really calculated to tell
18 you the truth.

19 Q. Okay. All right. Well, then let's move on if you haven't
20 calculated it closely. In addition to Appaloosa you have five
21 other -- there are five other co-plan investors who are funding
22 the proposed plan -- plan of reorganization for the debtors,
23 correct?

24 A. Yes.

25 Q. And those are Pardes, Harbinger, Goldman, UBS and Merrill

1 Lynch, correct?

2 A. Yes.

3 Q. And does Pardes own or hold any toppers?

4 A. I believe they do.

5 Q. And Harbinger holds toppers, correct?

6 A. I believe they do, I'm not sure. I don't know run their
7 fund.

8 Q. I'm sorry?

9 A. I don't run the fund, but, yeah, I believe they do.

10 Q. And Goldman?

11 A. I'm not quite sure, I think they might. But I'm not quite
12 sure.

13 Q. Okay. And what about UBS and Merrill Lynch?

14 A. I don't believe they do.

15 Q. Okay. You don't believe, you guess, or either?

16 A. I don't believe and I'm not sure.

17 Q. Together with the other co-plan investors who do own
18 toppers is it fair to say that together you have something in
19 the neighborhood of fifty percent of all the toppers
20 outstanding?

21 A. I don't know the exact number, it's more than twenty-five,
22 it's less than 100 percent, that I'm sure of.

23 Q. Okay.

24 A. But it's probably something close to that number I would
25 say.

1 Q. Close to fifty?

2 A. Forty/fifty percent, something like that.

3 Q. So would it be fair range to say between forty and sixty
4 or between forty and fifty?

5 A. I really don't have the information but I know they own
6 toppers, I know they have around a certain number, I don't know
7 the exact number.

8 Q. Just since I messed up the record, so your testimony is
9 between forty and fifty?

10 A. Yes. I have not real idea but I think it's like that.

11 Q. Okay.

12 A. It's not something we had a conversation about, to tell
13 you the truth.

14 Q. Now, you just previously acknowledged contractual
15 subordination of the toppers to the senior notes. I want to
16 ask you a question about that.

17 Q. You understand that in the EPCA there is a provision that
18 calls for the waiver of that contractual subrogation provision,
19 correct?

20 A. Yes.

21 Q. And do you have an understanding of who it is that has to
22 act in order to affect that waiver? Is it only the people --
23 is it only the people holding the interests to which that
24 priority relates?

25 A. I -- I don't understand the question.

1 Q. Sure. Let me try it a different way. So there's going to
2 be a waiver, do you know who affects the waiver? Is there a
3 vote?

4 A. Are you saying a vote on the plan? I don't understand
5 your question. I mean, the people can vote on the plan or not
6 vote on the plan and it's in the plan, is that what you mean?

7 Q. Well, let me see if I can't isolate the variable I want to
8 ask you about. It's your testimony that, sort of, your upper
9 no vote on the plan determines how you vote on the waiver of
10 the subrogation provision, correct?

11 A. I don't understand what you're saying.

12 THE COURT: You mean subordination, right?

13 MR. BUTLER: Yes, I'm sorry, I said subrogation, I
14 mean subordination, correct. I'm sorry, Your Honor.

15 THE WITNESS: Can you repeat the question, please.

16 MR. BUTLER: Sure. Sure.

17 Q. So you understand that the EPCA has a provision that calls
18 for the waiver of the contractual subordination provision,
19 correct?

20 A. You know, I don't know this provision as such, okay. I
21 know that the way we structured -- how we structured the plan.
22 And the plan was structured as a par plus approved plan and it
23 was a big -- as I told you last week or two weeks ago, there's
24 a big compromise, the plan. So I'm not -- to tell you the
25 truth, I'm not aware of the specific provision. So if you have

1 the specific provision you can show it to me, I'll look at it.

2 But I don't know it --

3 Q. Okay.

4 A. -- exactly as -- as you say it.

5 Q. Okay. Let me ask you to turn to Exhibit 31 and that's
6 going to be behind -- well, you're going to be helped. Did I
7 say that's in non-confidential volume 6 -- does he have that.

8 A. Okay.

9 Q. And if you turn to page 64 or to section 11.10. Let me
10 know when you've gotten there, sir.

11 A. Sixty-four, 11.10.

12 Q. Yeah, page 64 and that section --

13 A. All right.

14 Q. 11.10. Do you see where it says subordination rights?

15 A. Yes.

16 Q. Okay. And it provides that "All claims against the
17 debtors and all rights and claims between or among holders of
18 claims relating, in any matter whatsoever, to distribution on
19 account of claims against or interest in the debtors based upon
20 any claims, claims of subordination rights whether asserted or
21 unasserted, legal or equitable shall be deemed satisfied by
22 distributions under the plan to holders of claims having such
23 subordinated rights. And such subordinated rights shall be
24 deemed waived, released, discharged and terminated as of the
25 effective date." Did I accurately read the first sentence of

1 that provision?

2 A. It was a long sentence, but I think so.

3 Q. Okay. And do you understand that to be saying that
4 any subordination rights that a senior party holds will be
5 deemed to be -- deemed to be waived by operation of the
6 agreements that relate to the EPCA -- that arise out of the
7 EPCA?

8 MR. BUTLER: Objection, calls for legal conclusion.

9 UNIDENTIFIED ATTORNEY: I guess understanding is very
10 important, Your Honor.

11 THE COURT: Well, it speaks for itself. I --

12 UNIDENTIFIED ATTORNEY: I need to know if he
13 understands it so I can ask him --

14 THE COURT: Do you understand the sentence?

15 THE WITNESS: Yeah, I understand the sentence.

16 THE COURT: Okay.

17 THE WITNESS: I understand the basis of how we made
18 the deal.

19 THE COURT: All right.

20 Q. So you understand that as a result of approval of the
21 plan, after a vote, that no one will have cause to complain
22 that they had a senior position that was not enforced, correct?

23 A. That -- that I understand.

24 Q. Okay.

25 A. Okay.

1 Q. And is that right? Is that your understanding of it?

2 A. Sure. But I mean, you're asking -- this --

3 Q. That's okay.

4 A. -- about a specific provision that I never saw before
5 because we have a general -- we have a general understanding in
6 this plan.

7 Q. You have lawyers who draft that language for you, right?

8 A. Yeah.

9 Q. But you knew that that's what you wanted to accomplish,
10 correct?

11 A. We knew, as I said to you last week, that this is a big
12 compromises plan and there's a lot of things that had to happen
13 in here, that's one of them. I mean there's substantive
14 consolidation issues. It's just very complicated. It's just
15 not that easy but yeah, sure.

16 Q. So, when you testified last week or week and half,
17 whenever it was, that you would not fund a plan that didn't
18 waive those contractual subordination rights, correct.

19 MR. BUTLER: Objection, Your Honor, that's not what
20 this provision says. I mean, just so the record's clear, the
21 provision -- you made a point of reading the provision into the
22 record --

23 THE COURT: Why don't you just say they would not --
24 not -- that would not be consistent with the language you just
25 read?

1 Q. Well, let me ask it a different way so that we can
2 try to save time. You would agree with me that you testified
3 at your deposition -- let's forget this language for the
4 moment, you'd agree that you testified at your deposition that
5 you would not fund a plan that did not provide for the waiver
6 of any contractual subordination rights, do you recall that
7 testimony?

8 UNIDENTIFIED ATTORNEY: Objection -- objection, Your
9 Honor, that's not proper impeachment. Anything that would
10 happen in the deposition, unless it's admitted, is hearsay. If
11 he has a question about what will and won't fund and it's
12 relevant he can ask it now.

13 MR. MOUSTAKAS: Number 1 --

14 THE COURT: Do you want to refresh his recollection?
15 I don't think you've asked him that question yet.

16 MR. MOUSTAKAS: I was following the Court's
17 admonition and really trying to move quickly.

18 THE COURT: I understand. But I --

19 MR. MOUSTAKAS: That's fine.

20 THE COURT: This is a long time to lay a foundation
21 for a question that, at least where I think you're going to be
22 going is perfectly obvious. So -- but go ahead.

23 MR. MOUSTAKAS: Okay.

24 Q. Would you fund a plan that did not contain --

25 MR. MOUSTAKAS: Strike that.

1 Q. Would you fund this plan if it did not contain a waiver of
2 contractual subordination rights?

3 A. I would not fund a plan that didn't have the sufficient
4 compromises by everybody that was involved to get this thing
5 done.

6 Q. But -- and I appreciate that answer and I think the Court
7 understands that answer but I do want you to answer
8 specifically --

9 A. If it -- my belief is it wouldn't get done unless you had
10 that in there.

11 Q. Okay.

12 A. Okay. If that helps you.

13 Q. That does help. Now, you -- you were involved in
14 receiving proposals with respect to the recoveries of various
15 classes of creditors of the debtors, correct, in connection
16 with your role as the plan administrator?

17 A. Sure.

18 Q. And it's fair to say that over time, and we talked about
19 this a little bit at your deposition, over time there were
20 numerous proposals, some of which were made by GM, some of
21 which were made by the creditors, some of which were made by
22 the debtors that called for the toppers to receive less than
23 par, do you recall that?

24 A. Yeah.

25 Q. And originally it had been your view, had it not, that the

1 toppers were entitled to parity with, for example, the trade
2 creditors, do you remember that?

3 A. Well, this again is a settlement case. So you're
4 basically making a settlement, you know, with GM and other
5 parties in here, you know, basically everybody has a right to,
6 theoretically, equitably subordinate GM, everybody does. So
7 you basically need a settlement with all the parties.

8 Our view was and is that the trade, if we do a different
9 type of plan, is really impaired. We'd impress that and, you
10 know, as I said before we let the subordinated debt get
11 impaired. That's, you know, whether that's right or wrong is
12 something different. And we did believe that because we think
13 that the trade, if it wasn't consolidated, would be drastically
14 impaired we thought there should be some sort of balance
15 between the trade and the sub-debt for giving up things in the
16 case which didn't happen. So be it.

17 Q. Now --

18 A. And -- and all that was struck to try to get this thing
19 done.

20 Q. The indentured trustee for the trust -- that issued the
21 trust, the toppers -- did not play an active role in the
22 negotiation over the toppers recoveries, fair to say?

23 A. Yes.

24 Q. But you did play an active role in the negotiations over
25 the toppers' recoveries, correct?

1 A. We were involved in formulating the total plan. So the
2 toppers are one aspect of that plan that we were concerned
3 about. And we were concerned about all major aspects of the
4 plan. The toppers are major aspects so we were concerned about
5 it, sure.

6 Q. But you wouldn't be surprised that when Judge Drain looks
7 at the exhibits in this case and sees David Tepper's responses
8 to proposals that there would be a significantly higher volume
9 of responses talking about how the toppers should be treated
10 then how any other class would be treated, correct?

11 A. I think there probably was as many about how the trade was
12 treated.

13 Q. But that was inter-related in your mind.

14 A. Yeah, that was definitely inter-related. So yeah, I think
15 that's -- but, you know, you really have -- I don't know if
16 that's true. I mean we had a lot to say about how GM was
17 treated too. I mean every time we talked about the toppers,
18 ever time we talked about the trade we talked about GM. It
19 wasn't in isolation that we talked about the toppers. I
20 mean -- I mean I would have to say that the biggest
21 conversations -- if you're asking me the question where were
22 the biggest conversation we had; it was absolutely GM, without
23 doubt and without question. If you're asking me if the hundred
24 of illustrative -- how do you say this in New York,
25 illustrative? Pittsburgh, sorry about that.

1 THE COURT: Mr. Tepper, I think you can say it
2 however you want.

3 THE WITNESS: Well, it's illustrative in Pittsburgh
4 so -- I mean there's just -- it was like one a day or two a
5 day. So I mean -- I mean, it's in the tens and twenties if
6 it's not in the hundreds of different scenarios. And certainly
7 there were topper scenarios that were less than that, as there
8 were, and we put them out ourselves, trade scenarios. So, I
9 mean, there's a lot of scenarios in this case.

10 Q. Generally speaking, earlier on, let's say sort of around
11 the time of -- before November, even before October 29th, you
12 had originally advocated for par plus accrued for the toppers,
13 correct?

14 A. Yes.

15 Q. And there came a time where you pulled back from that and
16 gave up on the accrued -- the post-petition interest in going
17 back and forth, correct?

18 A. Yes.

19 Q. And you indicated during a lot of these back and forth e-
20 mail conversations that it was your view that if you -- if the
21 toppers were to give up on accrued, they shouldn't have to take
22 it on the chin a second time by being held out of any rights
23 offering at a discount? For example there were some occasions
24 on which there would be a percentage of the equity that you
25 could buy in at a discounted rate. You felt, like, when there

1 was that opportunity for participation if the toppers had
2 already given something up, they shouldn't be asked to give up
3 again something else, right?

4 A. Exactly. The exact conversation in this particular one
5 time -- or this one -- a hundred illustrative scenarios that
6 you're speaking of that I believe you're referring to was
7 basically that if the toppers are at par the next give up
8 should be trade. That's what really was the background of that
9 conversation. And, you know, anything that came out of that.
10 That was the purpose of it. That the toppers gave, the trade
11 should give.

12 Q. And when the November 14th restated, amended EPCA was
13 submitted it provided for the toppers to receive par -- a
14 hundred percent of par and pre-petition interest and
15 participation rights, correct?

16 A. Yeah. I believe that's right, yes.

17 Q. And it's fair to say that that was, essentially, once you
18 had compromised with respect to post-petition interest to, sort
19 of, a line in the sand that had been drawn, at least during
20 that portion of the negotiations, is that fair to say?

21 A. The belief was that if the toppers give -- if that's what
22 you're asking, I'll tell you. I'll answer the question again.

23 Q. That's what we're doing.

24 A. It's the same answer. If the toppers gave, the trade
25 should give next.

1 Q. And so if the trade didn't give --

2 A. Didn't believe the toppers should give.

3 Q. Right. So if the trade didn't give you felt the toppers
4 should stick at --

5 A. Yeah.

6 Q. -- just giving up the post-petition interest?

7 A. Yeah.

8 Q. And in an effort to, sort of, move a little more quickly
9 through this, at any time I refer to something and you feel
10 like you need to see it you can see it, but do you have a
11 recollection that you got a -- I think we might have talked
12 about this -- that you got a proposal, at some point, from the
13 debtors and that -- I think it's the proposal you were just
14 talking about where you thought that you ought to get
15 participation rights if you had given up the accrued. And you
16 said, "Not commenting on the Pref A, but if the toppers are
17 getting only par they should participate in rights, the trade
18 should not. I looked for support on this and it's hard to
19 swallow otherwise." Is that, essentially, the conversation --
20 I'm sorry, the e-mail you're talking about?

21 MR. BUTLER: Your Honor, if I could interrupt --
22 object. If counsel could just refer to the Exhibit numbers so
23 we'd have some sense of what's being discussed on the record
24 would be helpful.

25 MR. MOUSTAKAS: Sure. Sure, I can do that.

1 Exhibit 160.

2 Q. Mr. Tepper, let me know when you've got that in front of
3 you. Are you ready?

4 A. Yeah.

5 Q. Okay. Now you see on the bottom of the page there's an
6 e-mail from John Sheehan who is the chief restructuring officer
7 of the debtors', correct?

8 A. Yup.

9 Q. And he's writing --

10 A. The chief restructuring officer.

11 Q. Officer, yeah.

12 A. Yeah.

13 Q. And he's writing an e-mail to you and a woman at GM,
14 Michelle Scherr (ph.), do you see that?

15 A. Uh-huh.

16 Q. And it is attaching what's described as a proposed
17 compromise to get the support of the UCC while keeping the
18 equity at the level of value previously provided in an earlier
19 exchange, do you see that?

20 A. Okay.

21 Q. Do you see that?

22 A. Yeah.

23 Q. Okay. And now let me take you back a step to Exhibit 148.

24 A. Is this it?

25 Q. And tell me, because there's a little confusion about

1 this, in the bottom right-hand corner, what's the Bates number,
2 the last four digits of the Bates number?

3 A. 1587.

4 Q. Okay. Good. So you see that at the bottom of this first
5 page is the same e-mail to David and Michelle from John --

6 A. Uh-huh.

7 Q. -- saying, among other things, that a proposed compromise
8 is being attached, correct?

9 A. Yeah.

10 Q. And you can feel free to --

11 A. Is it attached?

12 Q. Okay. So go to the next page. You see that -- is that
13 Bates 1580?

14 A. 1581.

15 Q. Okay.

16 A. 1580, yeah, the next page.

17 Q. And then 1581, right?

18 A. Yeah.

19 Q. So the proposal is entitled Revised Illustrative terms for
20 discussion 10/12/07, do you see that? That's at 1581.

21 A. I'm sorry, what are you asking?

22 Q. Do you see that?

23 A. What did you ask? I'm sorry, can you repeat the question?

24 Q. I'm asking you to go to the third page of this exhibit,
25 which is at page -- ends with 1581 --

1 A. Okay.

2 Q. -- to see that there was an attachment and this is what
3 the attachment purports to be.

4 A. Okay.

5 Q. Okay. Do you see that?

6 A. Yeah.

7 Q. Okay.

8 A. Okay.

9 Q. So the other version we were looking at -- you understand
10 that there have been productions from various sources, the
11 other production didn't have the attachment. So this
12 attachment -- I'm sorry, this exhibit shows what was attached
13 and it shows a proposal is attached and I want to ask you,
14 then, to go back to 160 to understand that -- and feel free to
15 look back at 148 if you need to.

16 A. Okay.

17 Q. But when you are -- when say I'm not commenting on the
18 Pref A, but if the toppers are only getting par they should
19 participate in rights, that whole sentence, that you're
20 reacting to the proposal that appears at 148?

21 UNIDENTIFIED ATTORNEY: Your Honor, objection. The
22 witness -- I mean, I'm sorry, the question assumes that it's
23 the same attachment. I don't think there's a foundation for
24 that and it's built into the question.

25 MR. MOUSTAKAS: I'll represent to the Court that this

1 is an exhibit that was put on the exhibit list by the debtor.

2 THE COURT: I'll overrule the objection.

3 Q. Okay. So going back to 160 --

4 A. Yeah.

5 Q. -- all I want to focus on there's -- this isn't going to
6 be terribly involved, is your response and the consistency of
7 that response between your testimony earlier, that you
8 remembered an occasion at which you were saying well look if
9 we're giving up this, the trade's got to give up that, right?

10 A. Uh-huh. Yup.

11 Q. and this is what you were talking about, right?

12 A. I know that on the -- I'm just -- you know, because
13 there's fluid conversations that may be going in between so I
14 know what I'm referring to on Exhibit 160. I don't know if
15 there's some conversation between --

16 Q. Okay. Well, let's do it this way.

17 A. -- to the Exhibit 148.

18 THE COURT: Wait, are you just trying to get him to
19 agree to what he already agreed to?

20 MR. MOUSTAKAS: No, Your Honor.

21 THE COURT: That he said that he made these
22 proposals?

23 MR. MOUSTAKAS: Well, I -- the language is what's
24 important to me. It's the language that's on that e-mail is
25 what's important to me, Your Honor.

1 THE COURT: Is there -- is there an objection to the
2 admissibility of this document?

3 MR. BUTLER: Your Honor, Exhibit 148 there is a
4 pending objection, Your Honor; it was an FRE 408 objection of
5 ours. This was a document produced by the debtors in
6 discovery, as Your Honor knows, a 408 is a fine discovery for
7 these purposes. We produced it. 148 was actually designated
8 by the bondholders, not by the debtors. And it is, you know,
9 our view is it's being both used here at trial and has been
10 intended for use by them for, I think, improper purposes.
11 They're trying to get into the settlement discussions that were
12 going on. These are settlement discussions under 408.

13 THE COURT: But --

14 MR. BUTLER: And that would be our objection, Your
15 Honor.

16 THE COURT: All your trying to show, aren't you, is
17 that Mr. Tepper is making various proposals --

18 MR. MOUSTAKAS: Correct.

19 THE COURT: -- on behalf of the toppers?

20 MR. MOUSTAKAS: And he's reacting -- that's correct.
21 You're exactly right.

22 THE COURT: So --

23 MR. MOUSTAKAS: And if the Court has that, I'll move
24 on.

25 THE COURT: I -- that's fine. I -- I -- it'll be

1 admitted for that purpose.

2 MR. MOUSTAKAS: Okay.

3 THE COURT: But let me ask you, Mr. Tepper, and
4 partly I've been wanting to say this so I'll say it. When you
5 -- when you make these proposals, are you wearing your toppers'
6 hat? Were you acting as a toppers' holder or are you, sort of,
7 acting as the broker for the deal? You seem to suggest that
8 you're acting as a broker for the deal to make everyone
9 satisfied.

10 THE WITNESS: Well, I have a belief that the
11 toppers -- the people that had toppers in my plan investors,
12 you know -- look, it's a complicated question because I have a
13 fiduciary responsibility to my investors. And I have some
14 responsibility to get a deal done here, I believe. So I have
15 two different fiduciary responsibilities as do other people
16 here. I don't believe that I could have brought along plan
17 investors -- other plan investors and I thought there were
18 people outside that have the toppers that would have -- I was
19 going to say a fit if -- if they didn't get what was -- what I
20 believed was the right treatment.

21 THE COURT: Now why is that?

22 THE WITNESS: Because we believe that the trade is
23 drastically impaired. And that this was a big compromise
24 already to let them not get impaired in this plan.

25 THE COURT: Okay.

1 MR. MOUSTAKAS: Thank you, Your Honor.

2 Q. All right. Well, let me skip ahead significantly and ask
3 you to now turn to Exhibit 185, Mr. Tepper. And that's going
4 to be in highly confidential exhibits volume 3.

5 A. Okay.

6 Q. And all I want to get out of this document, just so you
7 know and you're welcome to read as much of it as you need to
8 read, relates to -- first of all, identifying the parties.
9 This is an e-mail string between Appaloosa's lawyer and the
10 lawyer for the unsecured creditors committee, correct?

11 A. Lawyer to Rosenberg that looks right.

12 Q. Okay. And this is in a time period when it's become clear
13 to the plan investors that the August 3rd EPCA is ineffectual,
14 that certain conditions are not going to be met and the parties
15 are negotiating with one another to come up with what, I think,
16 results in the -- ultimately in the October 29th amendments.
17 So I want to direct your attention to a statement by your
18 lawyer merely saying that the parties have also been discussing
19 the treatment of trade -- I'm sorry, second paragraph, I
20 misspoke. I understand that there has been quite a bit of
21 dialogue regarding the treatment of the trust preferreds.
22 Mr. Lauria says to Mr. Rosenberg, your client, meaning the
23 creditors, posited an eighty to ninety percent recovery and
24 mine is of the view that par is as low as is feasible, given
25 the recoveries of the MDL on the equity." Do you see that?

1 A. I'm sorry, where are you referring to, what paragraph or
2 what are you --

3 Q. Sure. The second paragraph of the second e-mail on the
4 page. The first e-mail is a one-liner. The second e-mail is
5 from Mr. Lauria to Mr. Rosenberg. And in the second paragraph
6 --

7 A. Okay. I see that.

8 Q. Okay. And did I read that correct?

9 A. Do you want to read it again, because I didn't hear you
10 read it?

11 Q. Sure. "I understand" -- this is Mr. Lauria talking to
12 Mr. Rosenberg or writing to Mr. Rosenberg. "I understand that
13 there's been quite a bit of dialogue regarding the treatment of
14 the trust preferreds. Your client has posited an eighty to
15 ninety percent recovery and mine is of the view that par is as
16 low as is feasible, given the recoveries of the MDL and the
17 equity." Did I read that correct?

18 A. Yes.

19 Q. Okay. And does this accurately reflect where your
20 thinking was at this time? And before you answer that, let me
21 give you an easier question. Do you agree that there had
22 been -- that Mr. Lauria is correctly identifying that there had
23 been quite a bit of dialogue regarding the treatment of the
24 trust preferreds involving the creditors on one side and you on
25 the other?

1 A. I don't believe that's correct.

2 Q. Okay.

3 A. I believe that the UCC, and I could stand corrected, but I
4 believe that the UCC discussed this in detail among themselves.
5 And this is a very difficult issue for that committee. I don't
6 believe it's just me bring it to them and them not discussing
7 what their own fiduciary responsibility is to all parties that
8 they should be representing. So I have to believe that's
9 correct, what I just said, I think you would too, right?

10 Q. Well, I guess I'm asking a very narrow question about
11 whether you were engaged in discussions with the UCC about the
12 trust preferreds. Let's forget for a moment about the
13 percentages.

14 A. Okay. You said it differently the first time. So what
15 are you asking now?

16 Q. I'm trying to pear it down.

17 A. Okay.

18 Q. Sure. You'll agree with me that Mr. Lauria is correctly
19 communicating to Mr. Rosenberg that you've been involved in
20 discussions, quite a bit of dialogue, regarding the treatment
21 of the trust preferreds, that's true?

22 THE COURT: He just answered that.

23 MR. MOUSTAKAS: Then I'm sorry, I --

24 THE COURT: He said the you there, he thought, meant
25 you the committee internally have been in those discussions.

1 THE WITNESS: Well, I'm assuming they were in those
2 discussions.

3 THE COURT: If you want to ask him generally was the
4 topic also discussed between Appaloosa and the committee, is
5 that -- is that where you're going?

6 MR. MOUSTAKAS: Yes.

7 THE COURT: Was the topic also discussed between
8 Appaloosa and the committee?

9 THE WITNESS: Yes, as was -- yes, as was all things
10 discussed with the UCC. I mean, its one part of a -- of a
11 total plan.

12 Q. And finally, with respect to this, this represents the
13 position that you had described earlier which was that par was
14 as low as was feasible at the time, correct? From the
15 perspective of the toppers, correct?

16 A. Yes, I believe that's right.

17 Q. Okay. Okay. Are you familiar with the reasonable best
18 efforts clause in the EPCAs?

19 A. Reasonable best efforts to try to get the deal done by
20 both parties?

21 Q. Correct.

22 A. Yeah.

23 Q. That each investor shall use it's reasonable best effort
24 to take all actions and do all things reasonably necessary,
25 proper or advisable on its part -- on it's part of this

1 agreement and applicable laws to cooperate with the company and
2 to consummate and make effective the transactions --

3 A. I -- I generally know -- I'm trying -- you have to use my
4 reasonable best efforts. I don't know the exact language but
5 yes.

6 Q. And you have understood that language to say to other co-
7 claim investors hey, that means we're working on this plan.
8 You don't go start working on some other plan because you're
9 committed to doing this plan, correct?

10 A. Yes.

11 Q. And you're familiar with the fact that there was also a
12 plan investor agreement, an agreement not with the debtor but
13 an agreement among the plan investors that talked about -- that
14 governed the relationship among them, correct?

15 A. The additional investor agreement, is that what you're --

16 Q. No, I'm sorry, the plan investor agreement.

17 A. The plan investor, yes.

18 Q. Okay. You're familiar that it's a letter --

19 A. Yeah.

20 Q. -- on July 18th. And you'd agree with me that that
21 basically prohibits the plan investors, directly or indirectly,
22 from initiating, soliciting, knowingly cooperating or knowingly
23 encouraging any inquiries or making any proposal or offer that
24 constitutes or could be reasonably expected to lead to an
25 alternative transaction, do you remember that?

1 MR. FOX: Your Honor, if counsel wants the witness to
2 confirm the precise, contractual language of the article he
3 ought to put it in front of him or just make a representation
4 of the report and move on.

5 MR. MOUSTAKAS: I'm asking, generally, if he
6 understands that there is a provision in the plan investors'
7 agreement that was drafted by Appaloosa that essentially
8 commits all the plan investors to do a number of things that
9 are inconsistent with alternate transactions. That are -- that
10 keep people bound together or as is colloquially referred to as
11 locked up.

12 THE WITNESS: I understand that when I gave my word
13 to somebody and shake somebody's hand I have a deal, I have a
14 deal. That's what I understand. And that -- that language
15 basically says that, as I understand it.

16 Q. And they have -- and they have obligations coming back to
17 you as well?

18 A. Yeah, sure.

19 Q. And those obligations relate to the idea of loyalty,
20 correct?

21 A. Sure.

22 Q. And that everyone has a similar purpose in trying to
23 execute this transaction, correct?

24 A. Yes.

25 Q. And that you're not to go out on your own and try to

1 negotiate or talk about things that could lead to other
2 transactions, correct?

3 A. Not exactly.

4 Q. Okay. Tell me about that.

5 A. We don't prohibit people from talking.

6 Q. Okay. Well let's do this; Goldman Sachs is a co-plan
7 investor, correct?

8 A. Yes.

9 Q. And there came a time when Goldman Sachs was unable to
10 agree to the October 29 amendments to the EPCA, correct?

11 A. That they didn't agree.

12 Q. They did not, they didn't sign.

13 A. Yeah. Can you just -- unable, I mean, that's -- can you
14 ask that question again because that wasn't the right question?

15 Q. Absolutely. I can absolutely ask it again. There came a
16 time when some amendments were negotiated to the EPCA resulting
17 in what people call the October 29 amended EPCA and it was
18 contingent upon Goldman signing, correct?

19 A. Yes.

20 Q. Okay. And several days later it came to -- several days
21 later Goldman did not sign, did not execute the agreement,
22 correct?

23 A. Yes.

24 Q. And on its own terms the agreement expired, correct?

25 A. Yes.

1 Q. Okay. It came to your attention, at some point
2 thereafter, that Goldman was talking to GM, correct?

3 A. Yes.

4 Q. And -- and not only that GM -- that Goldman was talking to
5 GM but surreptitiously talking to GM, right?

6 A. Yes.

7 Q. In other words, Goldman didn't say to Appaloosa, who was
8 essentially the first among equals in this plan investor group,
9 I'm going to go talk to GM, right they never did that?

10 A. They can talk to whoever they want to.

11 Q. But they didn't disclose to you that they had done that?

12 A. No, they didn't.

13 Q. Okay.

14 A. Which they should do but they didn't.

15 Q. And you felt they should do that, correct?

16 A. It wasn't prohibited to talk to people but yeah, I kind of
17 think they should have.

18 Q. Okay. And there, sort of, is on par with that a similar
19 kind of understanding with respect to the debtor -- the
20 debtors' and their representatives that -- and that's referred
21 to often in the documents as safe harbor discussions or 408
22 discussions. Do you know what I'm talking about when I refer
23 to those concepts?

24 A. Yeah, you took the documents out of those safe harbor
25 discussions before.

1 Q. Okay.

2 A. Those are the ones where you're talking about the toppers,
3 which I thought were under safe harbor.

4 Q. Okay. So, when you -- we'll come back to this but you'll
5 agree with me that with respect to Delphi and its agents and
6 representatives, it's your expectation that they ought not to
7 be talking about alternatives or modifications to the plan
8 without having you know about that, without having the plan
9 investors know about that. And in fact there was a provision
10 by which those communications can be sanctioned -- can be --

11 A. I would expect, if do a deal with somebody they're my
12 partner in my deal. They're not trying to negotiate another
13 deal, that's what I would expect.

14 Q. Okay. And that's why it's important for you to
15 distinguish between talking, which is permissible --

16 A. More or less.

17 Q. -- and something other than talking, right?

18 A. Yeah.

19 Q. And so your view is that talking becomes -- so
20 supporting another transaction or advocating another
21 transaction, that is prohibited, right?

22 A. Yes.

23 Q. And you understand and believe that the line between those
24 two things isn't always easy to discern, is that fair to say?

25 A. Well, I mean, talking -- people can talk. People -- you

1 can't stop people from talking. People are in the deal or
2 they're not in the deal. I mean, this is basic human -- you
3 make a handshake, you make a deal, you've got a deal. You try
4 to do another deal; you try to do another deal.

5 Q. Right.

6 A. You try to make another handshake, somebody can't make
7 another handshake. I mean --

8 Q. So it's your view that you can't stop people from talking
9 but if people are trying, generally, to harm the deal --
10 materially harm the deal in some way, whether it's advocating
11 or supporting it, that would be a problem, right?

12 A. Yes.

13 Q. Okay. And so that's the distinction -- one of the
14 distinctions, right?

15 A. Yes.

16 Q. Okay. And the reason you hesitated is because there is
17 something short of actually trying to do material harm that you
18 would also think we should be prohibited, right?

19 A. Well, there's a -- there's a fine line --

20 Q. That part of it.

21 A. -- okay. If that's what you're trying to get out of me
22 somehow. There's a fine line in there someplace between
23 somebody being mischievous, which some people in your
24 committee -- on your ad hoc committee, I believe, were
25 mischievous and actually advocating another deal. And we just

1 -- we knew people were being mischievous on your committee and
2 we didn't stop it.

3 Q. Okay.

4 A. We warned them, you just better stop and being mischievous
5 but we didn't tell them, you know, not to, you know, to do
6 another deal. So --

7 Q. Right.

8 A. But we warned them that there's a line here that we're not
9 going to let them cross.

10 Q. Sure. And so -- with all this learning, let's go back to
11 Goldman. And let me ask you to turn to Exhibit 191, and that's
12 in, I'm told, the most recent volume of the highly confidential
13 documents.

14 Now, you've testified that you can't stop people from
15 talking but you can stop them with these agreements that we've
16 been talking about. You can stop them from being mischievous
17 or doing harm, correct?

18 A. Yes.

19 MR. FOX: Asked and answered, Your Honor.

20 THE COURT: Okay. It's all right.

21 Q. So now, do -- you drafted this letter on November 8, 2007,
22 correct?

23 A. Yes.

24 Q. And it's to Don Mullen, a representative of the Goldman
25 Sachs entity, right?

1 A. Yup.

2 Q. And turning to the second paragraph, you accuse -- let me
3 stop for a minute. We were talking earlier about conversations
4 that you learned Goldman was having with GM, correct?

5 A. I'm sorry, say that again, please.

6 Q. Sure. We were talking about the fact that after
7 Goldman -- that Goldman's involvement in the accession to the
8 October 29th amendment to the EPCA were conditional or
9 contingent and at some point they didn't come through. And
10 that during the time -- well, let me ask you, was it during the
11 time that they were deciding whether or not they were going to
12 execute that they talked to GM, as far as you know?

13 A. It was such a run-on sentence, do you want to try again
14 and hit me?

15 Q. Sure. I could use a grammarian. Let me ask it to you
16 this way, you agree with me that there was a time at which the
17 other plan investors were waiting for Goldman to decide whether
18 or not it was going to be in the October 29th deal, correct?

19 A. Yes.

20 Q. Okay. And I don't know how many days that was, but it was
21 a number of days, right?

22 A. Yeah, I guess. I --

23 Q. And were you lobbying it during that time? Were you
24 talking to the people at Goldman to find out if they were going
25 to get in the deal or not?

1 A. Yes.

2 Q. Okay. And at some point you testified, you found out that
3 the people at Goldman or someone at Goldman had been talking to
4 GM behind your back essentially, correct?

5 A. Yes.

6 Q. Okay. And what I'm asking now is, do you think that that
7 was during the time you were waiting to hear about whether they
8 were going to execute or after they decided they weren't going
9 to join the deal?

10 A. I don't know.

11 Q. Okay. You don't know. So let me ask you, turning to the
12 second paragraph of this letter you see you say you were
13 dismayed to learn, you say, that "Goldman had been working
14 surreptitiously and in breach of its obligations under the
15 EPCA, which remains in full force and effect at this time, to
16 strike an alternative deal with General Motors that would be
17 unacceptable to us. News of such deal, when combined with the
18 significant negative impact and Goldman's failure to support
19 the amendment would likely have had an even more devastating
20 impact on Delphi's securities and negated the possibility of
21 any agreement among the parties, regarding the terms of
22 Delphi's exit from Chapter 11."

23 Did I read that accurately?

24 A. Yes.

25 Q. Okay. So did -- I take it you believed, when you wrote

1 this letter, that Goldman had been working surreptitiously and
2 in breach of obligations it had to you and the other plan
3 investors, correct?

4 A. Yes.

5 Q. Okay. You also say that one of the ways in which the EPCA
6 is violated is that Goldman was obligated to use its reasonable
7 best efforts to take all actions and do all things reasonably
8 necessary, proper and advisable to consummate and make
9 effective the transactions contemplated by the EPCA?

10 A. Where are you reading, please?

11 Q. I'm sorry, now in the next paragraph. Talk about run-on
12 sentences, I'll read it to you. "Goldman's actions to pursue
13 an alternative transaction with GM were not authorized by
14 Appaloosa and plainly violated the EPCA which, among other
15 things, obligates Goldman to use its reasonable best effort to
16 take all actions and do all things reasonably necessary, proper
17 and advisable to consummate and make effective the transactions
18 contemplated by the EPCA and therefore prohibits Goldman from
19 unilaterally engaging in, continuing or otherwise participating
20 in any negotiations regarding any alternate transaction."

21 MR. BUTLER: Objection.

22 Q. Did I read that correct?

23 A. Yeah.

24 MR. BUTLER: I have an -- I stated an objection.

25 Your Honor, I have no clue where this is headed. I don't know

1 whether Goldman --

2 THE COURT: Well, no. I'll let him go a little bit
3 further. Well let me -- let me ask you this question, maybe
4 this'll cut it short. To your knowledge, do you know what
5 Goldman and GM were talking about?

6 THE WITNESS: Yeah.

7 THE COURT: To your knowledge, was that an
8 improvement as far as the creditors and estate were concerned
9 on the October 28 transaction or something else?

10 THE WITNESS: It would have been -- I'm trying to
11 remember exactly what date. I believe it would have been an
12 improvement. It would have been -- it would have put a taint
13 on the deal. I don't know if it would have changed it that
14 much in some respects but it -- it would have, in a way, just
15 made it really difficult to get things done.

16 THE COURT: Did Goldman not sign -- to your
17 knowledge, did Goldman not sign the October 29 deal or 28 deal
18 because it thought that deal was too rich for the investors?

19 THE WITNESS: They were one of the investors, so. I
20 don't understand.

21 THE COURT: Well, the one -- I'm sorry, the one they
22 refused to sign -- the one they didn't sign.

23 THE WITNESS: They didn't think it was rich enough
24 for them, is that what you mean?

25 THE COURT: Did they -- did they sign that because

1 they thought it was too rich for the -- did they not sign it
2 because they thought it was too rich for the plan investors?

3 THE WITNESS: Oh no, they thought they were going to
4 lose money.

5 THE COURT: Okay.

6 Q. Okay. And if you could explain to the Judge, all of the
7 plan investors had different interests and had different
8 obligations and didn't have a similar burden with respect to
9 the ways in which the various rights were distributed, correct?
10 Let me ask it a different way, they had a bigger obligation to
11 fund the backstop than other plan investors, correct?

12 A. Yes. Yes.

13 Q. And they were worried about the backstop kicking in,
14 correct?

15 A. Yes.

16 Q. Okay. The other people had less backstop obligations so
17 they didn't have that worry, correct?

18 A. No. No, they did have that worry.

19 THE COURT: I'm actually, now, considering Mr.
20 Butler's objection. Unless you're -- unless you're trying to
21 lay the foundation that Appaloosa was using the lockup to kill
22 a higher and better deal for the debtor, I don't think this is
23 worth pursuing.

24 MR. MOUSTAKAS: I can approach. I'd like to not say
25 in open court where I'm going with reasonable questions of the

1 letter that this gentleman drafted.

2 THE COURT: Well, if you're going in that direction
3 I'll let you do it.

4 Q. Did -- when you answered the Judge's question that it
5 would be a taint on the deal, is that because --

6 A. They didn't have -- they didn't -- I didn't find out about
7 their deal till after this deal was dead, okay. And I didn't
8 find out about the conversations till after this deal was dead.
9 And so to answer your question better, I didn't know about it
10 before the deadline had passed.

11 THE COURT: Okay.

12 THE WITNESS: I found out about it once the deadline
13 had passed and that's, you know, if that helps you or --

14 Q. And so the taint wasn't that it treated creditors less
15 favorably, the taint was it caused you not to trust one of your
16 plan investors, correct?

17 A. It would -- first off, it couldn't happen because we were
18 passed the deadline in general. But if the -- if they had
19 brought it up earlier, which they couldn't have done because
20 they can't have the negotiations with them by themselves, they
21 can't do that. But if there plan was, in fact, there it would
22 have cast a -- we thought of the way they were structuring the
23 deal.

24 Q. All right. Let me ask --

25 A. For the -- over the whole plan and the way things would be

1 viewed. Which it ultimately did anyways, okay. I mean, it had
2 that result and that -- effectively in any case.

3 Q. Do you remember testifying at your deposition that you
4 didn't know what those conversations were about between GM and
5 Goldman, do you remember that?

6 A. I know what the last plan was. I don't know their
7 conversations.

8 Q. Okay. So can you articulate whether --

9 A. And I didn't hear that directly, I heard that second hand.

10 Q. Right. Can you articulate the way in which -- let me ask
11 it this way. Is it your position that if Goldman went to GM
12 and said, I can't fund -- I can't be obligated on this whole
13 backstop, are you willing to take up some of the backstop in
14 exchange for something else and that something else didn't hurt
15 Appaloosa or any other plan investor, that that's a still -- a
16 prohibited transaction, irrespective of whether it harms the
17 deal in any way because it's surreptitious and it keeps you out
18 of the loop?

19 A. It hurt the plan investors.

20 MR. FOX: Wait -- wait.

21 THE COURT: There's an objection.

22 MR. FOX: Objection, it's an irrelevant hypothetical.

23 MR. MOUSTAKAS: There are number, Your Honor -- if
24 the Court doesn't want me to approach I'll tell you in open
25 court. There are a number of provisions in this EPCA and in

1 the enforcement that have the effect of locking people up,
2 preventing people from talking to one another. The debtor has
3 complained, and we can show you the e-mails, that these rules
4 have been applied so rigidly that they have to ask for
5 permission to talk amongst themselves. And one of our themes
6 is going to be, and I think it's pretty clear, that this was a
7 way in which Appaloosa locked down and kept people from coming
8 to what would have been, you know, a more optimal deal for --
9 for the stakeholders. And it goes to the hard of it. So I
10 can't see how it's irrelevant and I can't understand, for the
11 life of me, why I'm not entitled to ask. But now I have to
12 ask, having disclosed in open court --

13 THE COURT: Well, the -- I guess, the agreement
14 speaks for itself and the letter speaks for itself. I'm more
15 interested in how they've actually conducted themselves. So
16 I -- I -- given that you said you only had an hour, I'm not
17 going to let you get in a lot of hypothetical questions.
18 Q. Did -- have you ever talked about threatening to sue
19 Goldman over this violation?

20 THE COURT: It's right here. It's in the letter. He
21 threatened to sue them in the letter. He said they're in
22 breach. Okay?

23 MR. MOUSTAKAS: I'll move on, Your Honor.
24 Q. Now, the EPCA also has, in addition to penalties for
25 engaging in an alternate transaction, it also has a provision

1 that relates to changes of recommendation, correct?

2 A. Yeah, I believe it does. Yeah.

3 Q. And the parties take this -- let me ask you whether you
4 have seen the brief filed last night in this case, for the
5 reply brief by the debtors?

6 A. No.

7 Q. Would it surprise you that in that brief, and footnoted in
8 that brief, the debtors have a caveat that says nothing we say
9 here should be construed to be a change of recommendation? In
10 other words, that they are concerned about triggering the
11 change of recommendation provision in the EPCA.

12 MR. FOX: Objection. Any inference about the
13 debtors' concern, based on the debtors' submission, is not a
14 proper subject of (indiscernible) to the witness.

15 MR. MOUSTAKAS: Your Honor, I --

16 THE COURT: Are you prepared to waive the change of
17 recommendation provisions of the EPCA?

18 THE WITNESS: No.

19 THE COURT: Okay. I think you can move on.

20 Q. Now, after Goldman refused to join in the October 29th
21 amended EPCA, the plan investors announced or maybe Appaloosa
22 announced to the market that the amendment had expired by its
23 own terms, correct?

24 A. Yes.

25 Q. You didn't indicate, however, that the August 3rd EPCA was

1 likewise no longer in effect, correct?

2 THE COURT: I'm sorry, did you did or didn't.

3 MR. MOUSTAKAS: Did not.

4 THE COURT: Did not.

5 THE WITNESS: It's still in effect.

6 Q. It's still in effect. What do you mean when you say it's
7 still in effect?

8 A. It's still in effect.

9 Q. In what respect is it still in effect?

10 A. That it's still in effect. I mean, I don't know --

11 Q. Tell me, practically, what that means.

12 A. If the terms and conditions can be met by all parties, all
13 the plan investors are still going to do the deal, it's still
14 in effect.

15 Q. Okay. But you have said, if the company can meet the reps
16 and conditions under the EPCA, yes. But they can't, do you
17 remember saying that?

18 A. Yeah. That -- well, look its closing conditions. Right
19 now, given the way the world is, it looks highly unlikely that
20 they can. And certainly we could have just sat on our hands
21 and not try to do anything else or any other plan. And maybe
22 that would have been much smarter. But we wanted to try to
23 bring this company out of bankruptcy. So maybe I'm an idiot
24 for trying to do that but that's what we tried to do.

25 Q. But in -- but in the interim, the successive plans --

1 well, the November 14th amendment -- restated amendments have
2 caused greater value and greater discounts to flow to the plan
3 investors. I mean, that's obvious, correct?

4 A. I'm sorry. I'm sorry. Say again your question.

5 Q. Sure. You say that you could have sat on your hands but
6 instead you tried to create greater value, correct?

7 A. No, I didn't say that.

8 Q. Okay.

9 A. I said I could have sat on my hands and let -- you know,
10 we would be here till March 31st with nothing else.

11 Q. But one consequence of not sitting on your hands and
12 continuing to negotiate was -- resulted in the November 14th
13 restated amendments which transferred significantly more value
14 to the plan investors, correct?

15 A. There was a change in conditions and that plan reflected
16 change of the general market conditions. And certainly
17 anybody, I believe that it wasn't changed so somebody else
18 could put a higher plan out. I think that's still there, is
19 that correct?

20 Q. Say that again?

21 A. Can't somebody else plan higher and they'll pay us a
22 breakup fee that's not that much money, is that right? I think
23 it's still right.

24 Q. So it's your position that --

25 MR. MOUSTAKAS: Strike that.

1 A. It's my position that if there's a higher bid, somebody
2 should bid.

3 Q. Right.

4 A. And they have every right to bid and I'm sure the Court
5 will take the higher bid. That's my -- that's what we --
6 that's the deal.

7 Q. Okay. But that's not my question. It's very difficult to
8 get --

9 A. Well, it's the answer.

10 Q. I understand that that's how you operate, but no. I want
11 to have you focus on the question that I'm asking. You'll
12 agree with me that as a result of a number of provisions that
13 make it difficult for anybody to talk to other people, it's
14 less like that you'll be able to talk to someone without
15 incurring a fee, correct?

16 A. What?

17 Q. You just said -- perhaps I misunderstood you. I thought
18 that you just said that a higher bidder could come in and
19 win -- win the role as plan investor, correct?

20 A. Sure.

21 Q. Okay.

22 A. I think that's right.

23 Q. Right. But it's -- the lockups we've talking about make
24 that harder because they prohibit a large universe of people,
25 the plan investors, additional investors, the affiliates of the

1 additional investors and the Delphi -- well it's the debtors'
2 representatives and agents from talking about anything that
3 could be construed as an alternate transaction without
4 incurring a fee, correct?

5 A. I think that's so ridiculous, what you just said, I don't
6 know how to answer it. Because you're saying that we locked up
7 the market when there's such a small group in here versus a
8 whole larger markup -- the whole larger market. You have a
9 million different large hedge funds. There's no large hedge
10 fund -- largest hedge funds, there's not one locked up here,
11 the large private equity funds, there's not one locked up in
12 here. Ninety -- eighty, ninety percent of the commercial
13 banks, ninety-five percent of the commercial banks --
14 investment banks in the world, they're not locked up in this
15 thing. So we're locking up, I don't know, one percent of the
16 capital of the world, maybe a half percent. So ninety-nine and
17 a half percent, and I'm making these -- I don't know these
18 numbers exactly maybe ninety percent, it may be ninety-nine and
19 a half percent, of the capital world is up there to plan
20 this -- to do this deal if they want to do this deal and, you
21 know, they can. That's the facts.

22 Q. So the lockups don't make it less likely that people will
23 be able to -- let me ask it this way --

24 A. It makes it less likely -- the people that are in our deal
25 are in our deal. We don't lockup the world.

1 Q. The lockups certainly make it more difficult for Delphi,
2 without incurring a fee, to solicit interest, correct?

3 A. Sure.

4 Q. Okay. So let me come back to the question that I was
5 asking you before with respect to the vitality of the
6 August 3rd EPCA. There were a number of conditions that you've
7 already articulated and can go over all of them, but there
8 numerous conditions that were not met and that you believe
9 cannot be met, correct?

10 A. Again, okay, you say they cannot be met but my
11 understanding is that these conditions have to be met on
12 closing. I could be wrong, I'm not a lawyer, but that's my
13 understanding. We didn't have closing. We can wait to the
14 close. Not close the deal because they can't make the
15 conditions or we can try to do another deal. I mean, that's
16 where we are.

17 Q. Right. So one of the things that you are hoping -- that
18 could happen is DRI could write a new report and say we made a
19 mistake actually, our forecast was wrong, we've got a different
20 forecast and GM is going to be selling cars all over the world
21 in far higher volumes than ever before, is that the kind of
22 thing that you're talking about that could happen?

23 A. Sure that could happen. I don't know --

24 Q. So how many of those kinds of things would have to happen
25 in order for you to fund this EPCA, to fund a plan under this

1 EPCA, the original EPCA? How many conditions that you
2 currently believe are not satisfied would have to be satisfied
3 in order for you to scrap this deal in which the plan investors
4 get a lot more money and come back to the August 2nd or 3rd
5 EPCA?

6 A. Well, either we're making this new deal or not making this
7 new deal and we can sit on the new deal -- on the old deal. If
8 you, you know -- I mean, we can sit on the old deal if that's
9 what people would want us to do.

10 Q. Sure.

11 A. I don't understand your question.

12 Q. I'm trying to see if I can understand the assessment that
13 might have been made about the likelihood that those conditions
14 would get through.

15 A. Okay.

16 Q. Okay. So let's start with there are numerous conditions
17 that are unfulfilled, correct?

18 A. Again, my understanding is you have to wait till the
19 closing. There's numerous conditions that we don't believe can
20 be filled at closing and I think that's correct.

21 Q. Which conditions do you think cannot be --

22 A. We don't believe that the capitalization conditions can be
23 fulfilled at closing. We have -- and that condition being the
24 main condition that we don't believe will be fulfilled.

25 There's the GM settlement which we believe there has to be an

1 adjustment that we have issues with. The business plan --

2 Q. Let me stop you right there. I want to ask you about
3 that. Were you aware, as the GM settlement was being
4 negotiated, of those negotiations in any way?

5 A. Yeah.

6 Q. Okay. And was the -- were the debtors aware of the number
7 that their settlement needed to come in to satisfy the plan
8 investors?

9 A. I think we all had an understanding, yeah.

10 Q. And when the negotiations were taking that number above
11 the cap, was there ever an occasion to say hey, you know,
12 you're going to miss a condition, you're going to blow a
13 condition?

14 A. You're making the assumption that we're in here running
15 this company which we are not. We were not in active
16 negotiations with GM. We get report after the fact. We can
17 only go and see what's after the fact.

18 Q. Before -- when negotiations were ongoing, did the plan
19 investors indicate to the debtors that they had an expectation
20 that a settlement would take place that would not exceed the
21 cap?

22 A. Sure.

23 Q. Okay. So you're disappointed when it exceeded the cap,
24 correct?

25 A. Wouldn't you be?

1 Q. I would be.

2 A. Yeah, good.

3 Q. The DRI reports another thing that's, sort of, now
4 historically happened. It caused -- it forecasted downturn in
5 the market for the cars that Delphi products go into at a level
6 of forty, forty-five percent, right? Delphi's biggest customer
7 is GM, right?

8 A. Yeah.

9 Q. Okay. Forty-five percent of its sales are to GM,
10 something around there, forty, forty-five?

11 A. Well, you're talking about current sales or -- I mean,
12 what's your question? I mean currently, after the bankruptcy?

13 Q. Why don't we stick with --

14 A. Currently, more or less?

15 Q. Why don't we stick with it's the biggest customer? Why
16 don't we stick with that?

17 A. It's its biggest customer, that's safe, sure.

18 Q. Let's stick with that. Let's stick with that. And you've
19 identified a report by an analyst that -- of expectation of
20 downturns in demand for GM cars during a certain time period to
21 be a factor that causes the business plan to be, essentially,
22 in breach or, you know, it says that the business plan won't
23 meet -- one condition in the business plan will not be met,
24 correct, about volumes?

25 A. No.

1 MR. BUTLER: Objection.

2 Q. All right, explain.

3 THE COURT: The basis of the objection?

4 MR. ISENMAN: It's not that a condition of the
5 business plan won't be met, it's a condition of the EPCA based
6 on changes -- it's just a -- he's just using wrong language so
7 I'm noting it.

8 Q. The EPCA requires that the business plan be fulfilled on
9 the terms that you've approved it at, correct?

10 A. Sure.

11 Q. Okay. So you understand when I say that the condition
12 hasn't been fulfilled we're talking about the condition that is
13 incorporated through the EPCA but it's a business plan
14 representation?

15 A. The business plan representation basically, yeah.

16 Q. So let me just ask you -- you're a very straightforward
17 man so let me ask you in a very straightforward way, in your
18 heart of hearts you think that there is no chance that all of
19 the conditions to closing could possibly take place and allow
20 you to fund the plan of reorganization under the August 3rd
21 EPCA, correct?

22 A. I believe it would be very, very, very difficult for the
23 conditions to be met and that's why we went into negotiations
24 on a new deal.

25 Q. Okay. Now, you had -- you heard some testimony, perhaps,

1 if you came in about the interest rate cap, are you familiar
2 with that issue?

3 MR. ISENMAN: Objection, the witness did not here the
4 testimony, he was not in the room.

5 THE COURT: Yeah, he wasn't -- he wasn't in here.

6 MR. MOUSTAKAS: I thought he said something earlier
7 about having been in the room. I misunderstood.

8 Q. The -- you've -- the plan investors have imposed, as of
9 the November 14th amendments, an interest cap -- a cap on
10 interest expenses, correct?

11 A. Yes.

12 Q. And that cap is 585 million dollars, correct?

13 A. Yes.

14 Q. And you understand that under the current circumstances
15 the annual interest for, I guess, 2008 could exceed 585
16 million, correct?

17 A. You mean on the pro forma basis, the way we have it
18 defined, that's what you mean?

19 Q. Yeah.

20 A. That's what you mean?

21 Q. Why don't you answer it that way first?

22 A. What's your question again, then? Can you just restate
23 your question again?

24 Q. Let me see if I can make this more straightforward. You
25 recognize there's a risk that that condition will not be met in

1 the current market, correct?

2 A. Yes.

3 Q. And if that's not met, you'll be entitled to either waive
4 the condition, right? That's one thing you could do, right?

5 A. We can't do it alone; all the plan investors have to vote
6 as a group.

7 Q. As a group, so that's one option?

8 A. Yes.

9 Q. A second option is, you could walk away from the
10 transaction entirely, correct?

11 A. I'm sorry, the second --

12 Q. Walk away from the transaction --

13 A. If the condition's not met?

14 Q. Correct.

15 A. Yes.

16 Q. and if that happened, the debtors would still be liable
17 for a breakup fee, correct, because the conditions --

18 A. I don't -- I don't believe that's correct. If they did
19 another deal, you're saying?

20 Q. Within a certain amount of time, right.

21 A. Before March 31st? I shouldn't ask the questions, I
22 should answer them. Why don't you ask the question --

23 Q. Is that your answer? Is that your answer, that they
24 would --

25 A. I don't know what you're asking because I'm -- why don't

1 you ask the questions and I'll answer the questions.

2 THE COURT: Why don't we look at the agreement on
3 this one?

4 MR. MOUSTAKAS: Sure. Sure.

5 THE COURT: I don't think Mr. Tepper really knows.

6 MR. MOUSTAKAS: That's fine.

7 Q. And the third thing is you could renegotiate yet again,
8 correct? Renegotiate new terms, correct?

9 A. We could.

10 Q. Okay.

11 MR. MOUSTAKAS: The Court's indulgence, I think I'm
12 just about done.

13 Q. Now, in order to decide whether, in the first instance, to
14 become a plan investor and become interested in this investment
15 opportunity, you had to make some assessment of the value of
16 the enterprise, correct?

17 A. Yes.

18 Q. And what form did that take? What kind of analysis did
19 you do?

20 A. You know, typical type analysis. We tried to do cash flow
21 analysis and, you know, different -- different ways of doing
22 the analysis.

23 Q. Okay. Did you do an internal rate of return analysis?

24 A. Well we typically do it that way, but yeah I'm sure it was
25 part of our thought process.

1 Q. Okay. And in connection with running the numbers
2 associated with the various articulations or the various
3 iterations of these illustrations, is it something you would
4 typically run through some kind of model to figure out whether
5 the deal is getting better or worse for you?

6 A. I don't think like that on a daily basis or, you know, the
7 way you're talking about it, no.

8 Q. Okay. How frequently would you do that?

9 A. Not that frequently.

10 Q. Okay. More than once a month?

11 A. No.

12 Q. Okay. How many times did you do it? For every EPCA did
13 you do it?

14 A. I don't know. I mean, this is -- this two years. I don't
15 know.

16 MR. BUTLER: I'm just going to admit a minute. If
17 you want expert testimony you've got to go through expert
18 procedure. Under Rule 45 this is non-party. You're not
19 entitled to unretained expert if you need them. It's totally
20 irrelevant what -- what the witness' proprietary modeling is or
21 isn't with respect to this matter. It's not what the Court
22 needs to decide with respect to the amended EPCA.

23 MR. MOUSTAKAS: Your Honor, one of the -- as I
24 understand it, one of the things that the Court is --

25 THE COURT: No, I'll -- I'll overrule the objection.

1 MR. MOUSTAKAS: So --

2 THE COURT: But -- let me just ask this and I think
3 this is where you're going. Is -- in terms of the return to
4 the plan investors, and recognizing the -- the change in
5 circumstances that you've cited for the reason that the deal
6 was amended, is the return higher on a net basis or lower than
7 the original EPCA?

8 THE WITNESS: The return is -- when we'll look at an
9 investment we'll look at other opportunities in the market at
10 the time, that's how we do it. And at the time when we thought
11 this investment was to what it is now its lower, the return is
12 lower.

13 THE COURT: Meaning, you could make more money
14 elsewhere?

15 THE WITNESS: Yes.

16 MR. MOUSTAKAS: Well I'd like to ask as a follow-up
17 question the question I was --

18 THE COURT: NO, that's fine. I just thought that was
19 where you're going --

20 MR. MOUSTAKAS: Right.

21 THE COURT: -- and we could save some time.

22 MR. MOUSTAKAS: Right.

23 Q. Comparing the August -- the return on the August 2nd EPCA
24 to the -- to the November 14th EPCA, the return is greater for
25 your irrespective of other opportunities, comparing those two

1 things to one another is more lucrative, correct?

2 A. I'm sorry; ask the question again, please.

3 Q. Sure. Analyzing it from the perspective that I want you
4 to analyze it from, which is comparing the rate of return on
5 the -- on the August 3rd EPCA to the rate of return associated
6 with the November 14th EPCA, if that went through, which is
7 more lucrative to the plan investors? Or let's start with
8 Appaloosa.

9 A. Well you can -- yeah, I was going to say you better ask me
10 because I don't know what the other guys -- how they're setting
11 up their books.

12 Q. Right.

13 A. But for me, I would set up a book and I would hedge, in
14 some respect, this transaction. And giving what values were at
15 the time, it might have been more lucrative on August 3rd.
16 And, you know, the transaction itself could have screwed me up.
17 Just on how I'd set up -- you know, how I'd set up the
18 portfolio. So, that's the answer.

19 Q. Okay. And what if you didn't -- what if you didn't hedge?
20 What if you just compared the rates of return on both of them,
21 apples to apples, without any alterations, without hedging --

22 MR. ISENMAN: Objection. Objection, Your Honor.

23 Q. Same answer?

24 MR. ISENMAN: Objection, Your Honor. He's looking to
25 see what the numbers are under the amended EPCA. If he's

1 looking for internal analyses and internal rates of return then
2 he's got his answer.

3 THE COURT: I think that's fair. I think you can
4 make that point at oral argument.

5 MR. MOUSTAKAS: Okay.

6 Q. You'd agree with me that you understand that Rothschild
7 did a valuation analysis and an updated valuation analysis for
8 the debtors, correct?

9 A. Uh-huh.

10 Q. And you understand that the assumption that the senior
11 noteholders recover a hundred percent of par plus accrued is
12 based on a negotiated total enterprise value, correct?

13 A. Uh-huh.

14 Q. Can you say yes?

15 THE COURT: Yeah, you say yes or no.

16 A. Yes.

17 Q. And you would agree with me that if one uses the midpoint
18 of the updated valuation analysis, which is lower than the
19 negotiated TEV, you would not yield a value that gave you a
20 hundred percent of par plus accrued, correct?

21 A. Is that the way the math works?

22 Q. I'm asking you?

23 A. I'm -- so I don't know the numbers so I'm asking -- I
24 don't know the number exactly. Do you have to tell me the
25 numbers exactly?

1 Q. You understand, generally speaking --

2 A. And I'll do the math for you if you need it.

3 Q. You understand, generally speaking, that the negotiated
4 total enterprise value is higher than the midpoint of the
5 valuation methodology that was -- that resulted from three
6 valuation methodologies that Rothschild undertook, do you
7 understand that?

8 A. I believe that's so.

9 Q. And so if you assume that the senior noteholders recover a
10 hundred percent of par plus accrued at the negotiated TEV, they
11 recover less than a hundred percent at the midpoint, which is a
12 smaller number than the negotiated TEV, correct?

13 A. That's the math. Yes, if that's the math I agree with the
14 math.

15 Q. Has that been in your -- have you given thought to that
16 fact?

17 A. No.

18 Q. And you haven't given though to that fact because your
19 view is this is a settlement and people have to take --
20 everybody's got to take some pain, right?

21 A. My -- the view is that, you know, it's very hard to value
22 everything right now in the marketplace. It's just really hard
23 and that's a fact. That I also think is a fact, there's
24 incredible volatility out there which is one of the reasons
25 we're here. So, you know -- thank you -- thanks.

1 Q. Earlier you used the term mischievous actions, when you
2 refer to mischievous actions by some of my clients you were
3 referring to the hiring of Goodwin Proctor, my law firm?

4 A. No, not exactly, no.

5 Q. Okay.

6 A. In some --

7 Q. You tempted me by saying not exactly, of course. What is
8 it then?

9 A. Well, I mean, it's kind of funny for somebody to be an
10 additional investor then be a party, as somebody objecting to
11 the plan that they're an additional investor to, so that's kind
12 of a funny thing. But that in itself I wouldn't just classify
13 as mischievous on its own. Talking to different people, you
14 know, about different things in the marketplace, that I would
15 refer to as mischievous. Is this a violation strictly? No.
16 And that's why it's mischievous.

17 Q. There was one aspect of your testimony at deposition I
18 just wanted to understand.

19 MR. MOUSTAKAS: Strike that. I think I'm -- I think
20 I'm through with the witness. Thank you.

21 THE COURT: Okay. Does anyone else have --

22 MR. FOX: Your Honor, it's not my intention to cross
23 examine Mr. Tepper because we designated his deposition
24 transcript to be admitted into evidence. There's been no
25 objection to it, I just want to confirm that there is no

1 objection and I don't have any questions for the witness.

2 THE COURT: Is there any objection to that?

3 MR. FOX: No objection, Your Honor.

4 THE COURT: Okay. I had a question. Mr. Tepper, you
5 answered a couple of questions earlier about the condition in
6 the December 3rd EPCA that interest expense be a certain dollar
7 amount, are you aware of the creditors committee limited
8 objection on that point?

9 THE WITNESS: I've heard something about it; I don't
10 know the exact objection.

11 THE COURT: They -- they believe it should be
12 another, roughly, eighty million, am I right on that?

13 MR. ISENMAN: Forty-five.

14 THE COURT: Forty-five million, excuse me.

15 MR. ISENMAN: Forty, sorry.

16 THE COURT: Forty. Were the interest expense at that
17 level, what would be the downside effect on the equity, the
18 reorganization equity that --

19 THE WITNESS: Well we, initially set the interest
20 expense -- it was because of what the initial bank feedback
21 was, that it should be under 600 million, is what I believe
22 that feedback was from the banks in this deal. And we had
23 originally talked about 560 before and then we raised it to
24 575. And this last deal we went back and pushed people to get
25 to 585 so this -- as far as history of it is concerned. I

1 guess our view is that it becomes -- the interest burden
2 becomes to high given the incredible uncertainty we have in the
3 next year or two, number one. And because of that high
4 uncertainty, it has an oversize effect on the equity, because
5 you can jeopardize -- you know, if I think about one thing at
6 night it's whether -- whether there's too much debt here and
7 too much interest to begin with. And it concerns me.

8 THE COURT: Well, the unsecured creditors are getting
9 equity now too; they're not getting any cash. I would
10 understand their argument -- I'd be a lot less sympathetic to
11 their argument if they were getting cash because they would be
12 loading the debt on the company but they're getting the equity.
13 And that raises the concern in my mind that there's -- there's,
14 perhaps, more option value in that condition then there is
15 downside that the plan investors are protecting against.

16 THE WITNESS: Well, if you -- if you -- you know,
17 look I -- I guess if you want to say that, you know, every ten
18 million of additional interest expense is so moldable on the
19 value of the business, decrease of the value of the business,
20 you could go that way strictly. But the question is, in this
21 environment of uncertain economic conditions it just becomes a
22 little bit more, in my view. So, you know, whether it's, you
23 know, 400 million, 500 million, 600 million, 700 million, eight
24 hundred million, in that ballpark of difference, that would be
25 the difference, you know, to the value of the company.

1 THE COURT: Have you considered --

2 THE WITNESS: And I think that -- I don't know if
3 that answers your question.

4 THE COURT: Have you considered limiting the cap on
5 damages for breach of the agreement with regard to this
6 condition?

7 THE WITNESS: We have considered everything. We --
8 it was very difficult to get people to move the condition to
9 585 and it was very difficult to keep people -- keep other plan
10 investors in this current agreement. So, we have talked to
11 different people, including ourselves, and we think given
12 the -- and I understand you're worried about the one side
13 option, we're concerned about, you know, tying up so much money
14 when there's so much opportunities in the marketplace right now
15 that we know we're going to buy. So I think that there's a
16 great belief that -- there's some belief by some parties that
17 it would be better to fee up the money, to not do this deal,
18 and to free it up for other opportunities in the marketplace
19 right now because it is a very hard marketplace. So I don't
20 think people would agree to it.

21 THE COURT: Okay. Any more questions?

22 MR. BUTLER: Your Honor I have --

23 THE COURT: You have a question? Okay.

24 REDIRECT EXAMINATION BY

25 MR. BUTLER:

1 Q. Mr. Tepper, when did you first get involved in the Delphi
2 transaction?

3 A. It's so long ago. I guess over two years ago, around
4 there.

5 Q. When did you make your first investment in Delphi?

6 A. Sometime -- sometime over two years ago.

7 Q. Was it before or after the debtors filed Chapter 11?

8 A. Before.

9 Q. And do you -- can you -- can you report any approximate
10 idea of the number of hours you personally have expended in
11 negotiations and meetings on trying to assist the debtors in
12 moving this plan forward?

13 A. Can I get paid an hourly rate if I do?

14 Q. I'd just like you -- if you could answer the question to
15 the best of your ability.

16 A. I don't know. Before the last couple weeks, we were
17 trying to limit a little bit more. I would say, probably,
18 twenty percent of my (indiscernible, cough) every week.

19 Q. So is it your testimony --

20 A. For the last two years.

21 Q. So is it your testimony that approximately twenty percent
22 of your --

23 A. Something like that.

24 Q. -- activity?

25 A. Yeah.

1 Q. How typical is that in the investments you make? I mean,
2 Appaloosa is known as a fund that makes lots of opportunistic
3 investments, how much --

4 A. It's a ridiculous amount of time for us. Too much time.
5 I mean, oversized amount of time.

6 Q. My question to you, and my last question sir, is the
7 question of why. Why did you invest this level of personal
8 time and commitment in working with Delphi?

9 A. I just asked my wife that question last night. So, I
10 don't know. I guess at some point, you know, its -- I guess we
11 made a deal. We're trying to figure out how to get this deal
12 done. We have some relationship with the parties in the case.
13 We'd like to see this thing come out of bankruptcy if we can.
14 We have fiduciary responsibilities to a lot of different people
15 and our own investors so we can't every violate that. But in
16 the fact that, and the same thing I said before, you know, you
17 make a handshake you make a handshake, it's what it is. That's
18 why. I don't know -- I don't know how else to say that.

19 Q. Thank you, Mr. Tepper

20 THE COURT: Okay. You can step down.

21 THE WITNESS: Thanks.

22 MR. BUTLER: Your Honor, the debtors' next witness
23 would be its chief restructuring officer, John D. Sheehan. We
24 have Exhibits 1 and 2 of the joint index have been designated
25 as Mr. Sheehan's declarations. And I would like to move to

1 enter those declarations into evidence, subject to cross
2 examination here at the hearing.

3 MR. ISENMAN: Your Honor, Michael Isenman, Goodwin
4 Proctor for certain bondholders. We -- at the time we were
5 required to required to, sometime last week, we made certain
6 objections to the two declarations. We've resolved some of
7 them. There are some that remain. And as I did with respect
8 to Mr. Resnick, I ask that I be able to hand up --

9 THE COURT: I think I -- I think I already have them.
10 I think you gave them --

11 MR. ISENMAN: Did I give them to you?

12 THE COURT: Yeah.

13 MR. ISENMAN: That's it.

14 THE COURT: All right. Have you given them to Mr.
15 Butler?

16 MR. ISENMAN: He has a set. I can give him another
17 set.

18 MR. BUTLER: That's okay.

19 MR. ISENMAN: And again, Your Honor, just for the
20 record in case there's any confusion, these rejections were
21 given to them last week. The only thing that was given to them
22 last night was this visual aid.

23 THE COURT: Okay.

24 MR. ISENMAN: And again -- and Your Honor, just to --

25 THE COURT: So should we start with the declaration?

1 MR. ISENMAN: That would be --

2 THE COURT: The first one?

3 MR. ISENMAN: That would be great, Your Honor.

4 THE COURT: Okay.

5 MR. ISENMAN: Again, there's a number of places, Your
6 Honor, where we are objecting on the basis of hearsay or no
7 personal knowledge. And again, so long as the testimony is
8 only coming in to show Mr. Sheehan's understanding, we don't
9 object to it.

10 THE COURT: Okay. Well, and as far as personal
11 knowledge, I mean, he is -- he has been, to my knowledge, very
12 intimately involved with a number of aspects of this case. So
13 he might have personal knowledge and I think that's something
14 you can bring out on cross, whether he does or doesn't.

15 MR. ISENMAN: That's -- and in fact, Your Honor,
16 sorry -- I apologize.

17 THE COURT: Okay. No, there are a couple -- I don't
18 know does that take care of all -- no, let me see here. Does
19 that take care of all of them in the first declaration?

20 MR. ISENMAN: Let's -- I believe -- I believe in the
21 first there is -- we did object, in paragraph 31 on page 10 on
22 the -- our objection was that this was an inadmissible lay
23 opinion. Just -- it's just the first sentence of paragraph 31.

24 MR. BUTLER: Your Honor, this is a business judgment
25 case.

1 THE COURT: Well he's --

2 MR. BUTLER: And this represents the judgment of the
3 chief restructuring officer of the company.

4 THE COURT: I don't -- right, I don't think this is
5 necessarily an expert opinion. This is something of someone
6 who's been advised by experts who's -- also I'm assuming has
7 been advised on the debtors' efforts to raise exit financing,
8 you know the matrixes that were brought out earlier. So I'll
9 overrule that one.

10 MR. ISENMAN: Okay. Your Honor, perhaps we should
11 move on to the first supplemental.

12 THE COURT: Okay.

13 MR. ISENMAN: It's actually the revised first
14 supplemental declaration.

15 THE COURT: Right.

16 MR. ISENMAN: And again, Your Honor, I think it's the
17 same types of objections. We don't object to the hearsay to
18 show what Mr. Sheehan's understanding was, we object to it for
19 the truth of the matter asserted.

20 THE COURT: Okay.

21 MR. ISENMAN: In addition, Your Honor, in the
22 revised -- the revised supplemental declaration, there are a
23 number of paragraphs that purports to describe what the EPCA
24 amendment accomplished, what it did. And so our objection
25 there, Your Honor, of course is simply that it's -- the

1 documents speaks for itself.

2 THE COURT: Well, which paragraph are you referring
3 to?

4 MR. ISENMAN: Paragraphs 16, 17, 18, 19, 20.

5 THE COURT: Well, I don't think 16 is objectionable
6 on that basis. I mean, I have a black line, you have a black
7 line, we can all see what the changes are. Are you contending
8 that this is somehow an inaccurate description?

9 MR. ISENMAN: Your Honor, we were only contending
10 that the document speaks for itself. It's --

11 THE COURT: But this is -- this is the -- the chief
12 restructuring officer showing his knowledge of the document and
13 what he considered. So I think it's admissible. You can --
14 you can cross examine him on whether he omitted something but I
15 don't think that's -- I'll overrule that objection.

16 MR. ISENMAN: Okay.

17 THE COURT: Same -- same for 18 and 19. So I think
18 that covers them.

19 MR. ISENMAN: I think it does, Your Honor. Thank
20 you.

21 THE COURT: Okay. Okay. Did you have objections to
22 the --

23 MR. FOX: Your Honor, with respect to the two Sheehan
24 declarations, I just have the -- the same point with respect to
25 settlement discussions as with Mr. Resnick's deposition.

1 THE COURT: That they're not -- no one's being bound
2 by what he's saying.

3 MR. FOX: Or they can't be used against somebody for
4 that purpose, Your Honor.

5 THE COURT: Well they're -- they're -- it's merely --
6 as I take it the purpose for which Mr. Sheehan describes
7 settlement discussions is to show the process by which the
8 company evalu -- came to and then evaluated the merits of --

9 MR. FOX: Yes, that --

10 THE COURT: -- the EPCA.

11 MR. ISENMAN: That's right, and for that purpose we
12 have no objection.

13 (Declarations of Mr. Sheehan were hereby received as Joint
14 Exhibits 1 through 2 for identification, as of this date.)

15 THE COURT: Okay. All right. So on -- with those --
16 on that basis and with those understandings the declarations
17 will be admitted.

18 MR. BUTLER: Thank you.

19 MR. ISENMAN: Okay. Where'd he go? Oh, okay. I
20 thought you were hiding for a second. All right. Could you
21 take the stand, please?

22 (Witness is sworn)

23 THE COURT: And just for the record, could you spell
24 your name?

25 THE WITNESS: John, J-O-H-N, Sheehan, S-H-E-E-H-A-N.

1 MR. ISENMAN: And Your Honor, just one preliminary
2 matter that I'll save Mr. Fox the trouble, Mr. Sheehan's
3 deposition transcript is Exhibit 181 and I understand there's
4 not an objection to its admission.

5 THE COURT: Okay. Is that true?

6 MR. BUTLER: That's correct.

7 THE COURT: All right.

8 MR. ISENMAN: So with that in mind, I will try to
9 keep this as brief as I can.

10 THE COURT: Okay.

11 CROSS EXAMINATION BY

12 MR. ISENMAN:

13 Q. Mr. Sheehan, nice to see you again.

14 A. Nice to see you, Mike.

15 Q. All right. Now, you've submitted two declarations in
16 connection with today's hearing, correct?

17 A. Yes, sir.

18 Q. And those are Exhibits 1 and 2 in this case. Perhaps it
19 would be helpful for you to confirm that that is the case.
20 Mr. Sheehan, do you have Exhibits 1 and 2 in front of you?

21 A. I do.

22 Q. Okay. And Exhibit 1 is -- is your declaration that's
23 dated November 2nd, correct?

24 A. That is correct.

25 Q. And Exhibit 2 is your declaration that is dated

1 November 21st, correct?

2 A. That's -- that's correct.

3 Q. And you understand that today's hearing is with respect to
4 what we can call the December 3rd EPCA?

5 A. I do.

6 Q. Okay. And it's fair to say that neither of the two
7 declarations that have been submitted as your direct testimony
8 addresses the December 3rd EPCA, correct?

9 A. They were both executed before December 3rd, yes.

10 Q. Okay.

11 A. So --

12 Q. And you did not execute another declaration in connection
13 with the December 3rd EPCA, right?

14 A. I did not.

15 Q. Okay. And you understood that because you didn't execute
16 a new declaration, you would not be subject to a deposition in
17 connection with today's hearing, correct?

18 A. I don't know that that's correct.

19 Q. Did you think that you would be deposed anyway?

20 A. I leave the question of when I get deposed by whom to the
21 myriad of lawyers in this case.

22 Q. Fair enough. And certainly there are plenty of them. So,
23 in other words you submitted there's been no deposition, no
24 declaration, you've submitted no testimony with respect to the
25 December 3rd EPCA?

1 A. That's correct.

2 Q. Okay. Now to your understanding, Mr. Sheehan, the plan
3 investors had approval rights with respect to the plan and the
4 disclosure statements that are filed, correct?

5 A. That is correct.

6 Q. And again, to your understanding, changing the treatment
7 under the EPCA for toppers or drops, they're the same thing,
8 right?

9 A. Yes.

10 Q. Do you understand in changing the treatment under the EPCA
11 for toppers required the consent of the plan investors,
12 correct?

13 A. Yes.

14 Q. Okay. And I'd like to direct your attention to
15 Exhibit 143.

16 MR. ISENMAN: And actually, if I could have the
17 debtors' help in identifying which volume that is in.

18 MR. BUTLER: Orange volume 3.

19 MR. ISENMAN: Thank you. And Your Honor, I believe
20 I'm going to probably get an objection in a second. This is
21 a -- its part of the settlement negotiations. I'm not seeking
22 to have it admitted to show some kind of concession or -- or
23 admission of liability. That's not the reason why I'm
24 directing Mr. Sheehan's attention to this document.

25 THE COURT: Okay. Which document is it again?

1 MR. ISENMAN: It's 143.

2 THE COURT: All right.

3 Q. Mr. Sheehan, do you have 143 in front of you?

4 A. Yes, I do.

5 Q. And you recognize this document?

6 A. Generally, yes.

7 Q. And you understand that it's a proposal for amendments to
8 the plan of reorganization submitted by Appaloosa, correct?

9 A. There -- it says at the top of it Appaloosa proposal,
10 Delphi POR Amendments Appaloosa Proposal. There's no date on
11 it or any other indication that it was submitted by Appaloosa.
12 And I would note that on page 2 it says, confirm with
13 Appaloosa/GM. So, I am not really able to confirm that to you.

14 Q. I'll tell you what, let's -- fair enough. Let's take a
15 look for a moment, instead, at Exhibit 146 which ought to be in
16 the same volume that you're in right now.

17 A. Uh-huh.

18 Q. Do you have Exhibit 146 in front of you?

19 A. Yes, I do.

20 Q. Okay. And this one does have a date on it, right?

21 A. Yes, it does.

22 Q. Do you recognize this document?

23 A. I'm more familiar with this document, yes.

24 Q. Okay. Good, let's go through this document then. And
25 this -- this is your -- to your understanding, this was

1 Appaloosa's comments on the debtors' proposed plan of
2 reorganization amendment, is that right?

3 A. That's what indicated at the top of the first page, yes.

4 Q. And you have no reason to doubt that, right?

5 A. I have no reason to doubt that.

6 Q. Okay. And if you look at the bottom of page one, are you
7 there?

8 A. Ye, sir.

9 Q. Okay. And you see it says -- it has certain language --
10 it says beginning "For toppers, combination of direct share
11 issuance and participation" and continues from there, do you
12 see that?

13 A. Yes, sir.

14 Q. Okay. And there's certain language that is underlined,
15 right?

16 A. Yes, sir.

17 Q. And there's certain language that is struck out?

18 A. Yes, sir.

19 Q. And it's your understanding that this is Appaloosa's
20 proposal to add certain language and delete certain other
21 language from this part of this provision, correct?

22 A. That's correct. It was a technical change that they were
23 making, yes.

24 Q. And this, what you call a technical change was -- it was a
25 change to how holders of toppers would be treated, correct?

1 A. I -- I call it a technical change because of the fact that
2 when the document was distributed to them it described it in
3 terms of a percentage and they were changing it into pure
4 dollar values. So the number 496 is now comprised of -- of two
5 pieces 426 plus seventy million.

6 Q. Okay. So if you turn to the next page, because this is a
7 carryover paragraph, right?

8 A. Yes, sir.

9 Q. Okay. You see that the number 78.4 is struck out -- 78.4
10 percent in the first line, do you see that?

11 A. Yes, sir.

12 Q. And the second line it says 92.5 percent, that's been
13 added?

14 A. Yes, sir.

15 Q. So that's not just a technical change, right?

16 A. I guess I'm not sure exactly what the 92.5 represents. I
17 haven't studied this in a while. But the -- I guess I'm not
18 sure; I'd have to study it first to understand it better.

19 Q. Well, let's just go back to my question. This is a change
20 being proposed by Appaloosa with respect to toppers, correct?

21 A. Yes, sir.

22 Q. Okay. And beyond that the document speaks for itself,
23 right?

24 A. That's correct.

25 Q. If you could -- you can put that document to the side. If

1 you can look at what's been marked as Exhibit 44.

2 A. To the side meaning you're coming back to it?

3 Q. I'm not going to come back to it.

4 THE COURT: That volume is that in?

5 MR. MOUSTAKAS: I apologize, Your Honor.

6 MR. BUTLER: It's orange --

7 MR. ISENMAN: Volume 2 of Orange.

8 MR. BUTLER: Orange 3.

9 MR. ISENMAN: Three, I'm sorry.

10 MR. BUTLER: I can't read right, Your Honor, orange
11 2, excuse me.

12 MR. ISENMAN: Yes, it is 3.

13 MR. BUTLER: Orange volume 2, Judge.

14 THE COURT: I'm sorry, what was the Exhibit number?

15 MR. ISENMAN: Exhibit 44, Your Honor.

16 Q. Mr. Sheehan, do you have Exhibit 44 in front of you?

17 A. Yes, sir.

18 Q. Okay. And you recognize this document?

19 A. Yes, I do.

20 Q. Okay. And this is an e-mail sent on your behalf to the
21 board on October 14th, right?

22 A. That's correct.

23 Q. Okay. And you've -- had you had a chance to familiarize
24 yourself again with the contents of this e-mail?

25 A. I haven't read the whole thing but I'm familiar with it, I

1 wrote it.

2 Q. Okay. Now, Mr. Sheehan, it's fair to say that by October
3 14th it was clear to you that the plan and investors, among
4 others, were using the disruption in capital markets to re-
5 leverage or renegotiate their economic positions, correct?

6 A. I don't think I -- I identified any particular party. I
7 think what I wrote was that our key stakeholders have used the
8 disruption in the capital markets, combined with the material
9 declines and projected future North American production volumes
10 and the general uncertainties in the automotive sector re-
11 leverage, renegotiate their economic positions vis-a-vis other
12 stakeholders in the deal.

13 Q. Okay. And I appreciate that. And -- but you were
14 including in that the plan investors, correct? And when you
15 referred to the key stakeholders you were referring,
16 specifically, among others to the plan investors, right?

17 A. Among others.

18 Q. But you -- that's a yes?

19 A. It's a yes with respect to the plan investors; I'm not
20 limiting it to them.

21 Q. Understood. If you turn back to Exhibit 1, which is your
22 declaration, your first declaration.

23 A. You're done with this one?

24 Q. I am. Do you have Exhibit 1 in front of you?

25 A. Yes, I do.

1 Q. Okay. Thanks. If you could turn to paragraph 43, it's on
2 page 14? Do you see that paragraph?

3 A. Yes, sir.

4 Q. Okay. So just to summarize, you recognized -- you
5 recognized, Mr. Sheehan, that when Delphi filed this disclosure
6 statement and plan that the plan investors --

7 THE COURT: It's okay. Well, we're trying to make
8 everyone cooler so -- maybe one of you gentleman in the back
9 can raise the window in the back, just don't fall out. Thanks.
10 Okay. You can go ahead, I'm sorry.

11 Q. Mr. Sheehan, can you see okay now?

12 A. Yes, I can. Thank you very much.

13 Q. Good. Turning back to paragraph 43, you recognize that
14 when Delphi filed the disclosure statement and plan the plan
15 investors maintained approval rights with respect to the
16 disclosure statement and plan, correct?

17 A. That's correct.

18 Q. Okay. And that provided them with a right not to follow
19 through on the transaction, correct?

20 A. That is correct.

21 Q. And as of the second half of September, Appaloosa was
22 quite clear that it would not move forward under the original
23 terms of the August 2nd EPCA, correct?

24 A. That's correct.

25 Q. Okay. Mr. Sheehan, do you -- you never took any

1 affirmative steps to find other equity investors in the
2 marketplace that were willing to make an (indiscernible, cough)
3 in Delphi in a higher assumed TEV then what the plan investors
4 offered, correct?

5 A. Are you speaking about a particular point in this case?

6 Q. Well, since the August 2nd EPCA.

7 A. Your question is whether, since August 2nd, I've actively
8 looked for other plan investors?

9 Q. That's right.

10 A. I think Mr. Resnick testified this morning about the fact
11 that we had not done so.

12 Q. And you're agreeing with that?

13 A. I agree with Mr. Resnick's testimony. Yes, I do.

14 Q. Okay. Now I believe that one of the things is apparent
15 from your declaration is that you believed that delaying the
16 company's emergence from bankruptcy could harm the company,
17 correct?

18 A. I had said that, yes.

19 Q. But you've never actually calculated how much harm a delay
20 of several months would actually cause, correct?

21 A. I think, in my deposition with you, I provided you an
22 example. And that example was that this company wins or
23 secures, I'll use a better word, secures over two billion
24 dollars of new business a month at double digit EBIDA, you
25 know, margins. And I can't tell you when our customers are

1 going to begin to become concerned about the fact that this
2 company is in Chapter 11. We have been exceedingly successful
3 at continuing to have the support of our customers, and we
4 really appreciate that from them. We only need to lose a
5 month's worth of business and we would lose two to four hundred
6 million dollars of value that would come to us in terms of
7 earnings from that business. So we -- we believe that we've
8 achieved everything we can in Chapter 11 and we've restructured
9 our labor agreements, we've restructured -- we've reached a
10 settlement agreement with General Motors. We have waivers from
11 the PBGC and the IRS that we're very appreciative of. And from
12 our perspective it's time to -- to get out before those things
13 start to fall apart.

14 MR. ISENMAN: Your Honor, can I ask the Court to
15 admonish the witness to actually answer the question that I
16 asked.

17 THE COURT: I think he was saying that it's
18 incalculable.

19 MR. ISENMAN: And that's --

20 Q. Is that correct, Mr. Sheehan, its incalculable?

21 A. I think I provided you the same answer that I did in my
22 deposition.

23 Q. Well --

24 A. I don't know if it's incalculable. What I can tell you is
25 this company earned -- books two billion dollars of business a

1 month, that's a lot of business. So I'll calculate that if I
2 lose one months worth of business, that's 400 million dollars
3 of profit to this company. That will effect the valuation of
4 this company.

5 Q. Okay. Since you've referred several times to my -- to
6 your deposition, why don't we turn there for a second. And
7 that's Exhibit 181 is the transcript of your deposition. Do
8 you have Exhibit 181, your transcript?

9 A. I do.

10 Q. And this is the transcript of -- of the deposition that
11 was taken of you a couple of weeks ago?

12 A. That's correct.

13 Q. Okay. And you've seen this before, right?

14 A. Yes, I have.

15 Q. If you could turn with me to page 193. Could you please
16 let me know when you're there?

17 A. I'm on page 193.

18 Q. At the very, very bottom of page 193 it says -- it's a
19 question. It says, "During the prior questioning you said that
20 permitting the EPCA to expire would have a devastating effect
21 on the company," correct? And your answer was, according to
22 the transcription here, "uh-huh." Do you see that?

23 A. I do.

24 Q. Okay. And then the very next question that I believe I
25 asked you was, "have you quantified that devastating effects

1 that you believe will happen?" And then there's, I believe,
2 some -- something similar to what you just testified to, right?

3 A. There's the same reference that I just made in court here.

4 Q. And then if you go with me to Page 195, are you there?

5 A. Yes, sir.

6 Q. I'm sorry, bear with me for one moment, Mr. Sheehan. I'm
7 sorry, I actually was referring to the wrong place and I
8 apologize. If you turn, actually, to the next page, 196, do
9 you see where I said, starting on line 14. The question was,
10 "I understand you don't want to find out, you also have not
11 calculated it, correct?" And your answer was, "correct",
12 right?

13 A. That's correct.

14 Q. Okay.

15 A. Because --

16 Q. You have not calculated it?

17 A. Right. The line of questioning here has been exactly
18 what's on pages 193, 94, 95 and 96. It's exactly the same.

19 Q. I understand. The only answer I was trying to get was you
20 haven't calculated it. That was my first question, that's all
21 I'm after here.

22 A. Right. I would only point out that paragraph or page 195
23 says the same thing I just said a few minutes ago.

24 Q. Okay. Now, the plan investors made a proposal to you on
25 November 6, correct? The first week of November.

1 A. Yes, I know what you're referring to.

2 Q. Okay. And you viewed the proposal that the plan investors
3 made at that time as a take it or leave it proposal, correct?

4 A. That's what I have testified to, correct.

5 Q. And you understood that if you did not take that proposal
6 that the plan investors were prepared to let the EPCA expire,
7 correct?

8 A. The -- the -- at that point in time -- there's not a lot
9 of proposals there. I don't know about necessarily allow the
10 EPCA to expire.

11 Q. Okay. I'll tell you what, let's -- if you turn to page
12 203 of your -- of your deposition --

13 A. Uh-huh.

14 Q. You see in -- are you on page 203?

15 A. Yes, I am.

16 Q. Okay. Do you see the question that begins on -- on line
17 5? It says, "And if they weren't prepared to move forward with
18 their investment that meant that they were prepared to let the
19 EPCA expire?" Do you see that?

20 A. Yes, I do.

21 Q. And the they in that sentence is referring to the plan
22 investors, right?

23 A. That's correct.

24 Q. And your answer was, presumably, right?

25 A. Correct.

1 Q. and then the very next question was, "Was that your
2 understanding?" And your answer was "I think that's correct,
3 yes," right?

4 A. I see that.

5 Q. Okay. Is it fair to say that at various times during this
6 process you have -- and I'm saying just, in fact, just since
7 August 3rd, that you felt that you haven't had a whole lot of
8 leverage with respect to the plan investors, correct?

9 A. I think that the challenges -- the dislocation that's
10 taken place in the capital markets has -- has been -- caused
11 this to be a difficult process and I would agree with your
12 assessment.

13 Q. Okay. Could you turn to Exhibit 151? Please let me know
14 when you have Exhibit 151 in front of you?

15 A. I have it. I have it.

16 Q. Mr. Sheehan, do you have Exhibit 151 in front of you?

17 A. I do.

18 Q. Okay. And do you recognize this document?

19 A. I do.

20 Q. For the record, could you just identify it?

21 A. This is an e-mail that I -- or it's a -- it's a series of
22 e-mail correspondence that I had with a representative from
23 JPMorgan.

24 Q. Okay. And the representative from JPMorgan was
25 Ms. Norma Courio, is that correct?

1 A. Yes, sir.

2 Q. And is it fair to say that at the time you wrote this e-
3 mail it was your intention to be truthful?

4 A. I believe I'm always truthful.

5 Q. Including in this case, of course?

6 A. Including in this case.

7 Q. Okay. And I apologize, I'm not trying to insult you in
8 any way, I'm just trying to jump through some evidentiary
9 hoops.

10 A. I am always truthful, I promise you.

11 Q. I'm glad to hear it. And if you look at the top of
12 Exhibit 151 there's -- the first e-mail in the string is
13 something that you authored, right?

14 A. You -- you define first how, from the top or the bottom?
15 I apologize.

16 Q. Fair point. I was simply referring to on the page.

17 A. On this page --

18 Q. So --

19 A. On this page the top -- the first e-mail is one that I
20 authored, yes it is.

21 Q. Okay. And you wrote to Ms. Courio -- I'm going to start
22 with the second sentence if that's okay.

23 A. Sure.

24 Q. "They are the only game in town in a financial market that
25 can only be characterized as fragile. They have established

1 terms under which they are willing to invest. They are
2 expensive and GM will have to come to our conclusion that we
3 have no choice." Did I read that correctly?

4 A. You did.

5 Q. Okay. And the they that is being referred to in the
6 quotation that I just read is the plan investors?

7 A. Yes, sir.

8 Q. Okay. And I'll try to make this quick, Mr. Sheehan. Your
9 investment banker, Rothschild, and specifically Mr. Resnick,
10 prepared a valuation of the company, correct?

11 A. Yes, sir.

12 Q. And that valuation had a range of values, right?

13 A. Yes, sir.

14 Q. And they were -- and it was -- it was Rothschild opining
15 that the value of the company fell somewhere within this range
16 of values but they couldn't say exactly where, correct?

17 A. Correct.

18 Q. Okay. For purposes of each of the -- of the EPCAs, since
19 August 2nd, including the one today, there's an assumed TEV for
20 purposes of the plan investor's buy-in, right?

21 A. That's correct.

22 Q. And for each of the EPCAs regeneration that assumed TEV
23 has been substantially below the range of values of the TEV
24 that Rothschild provided to the company, correct?

25 A. I don't think that's necessarily correct as it relates to

1 the October 29th amendment. The series B preferred in the
2 October 29th amendment was -- buy-in was at 11.8 billion
3 dollars which, I believe, does fall into the Rothschild range.

4 Q. Okay. And so -- fair enough. And since then, that has no
5 longer been the case, right?

6 A. It's not the case today.

7 Q. It's not the case today. It wasn't the case with the
8 November 14th EPCA either?

9 A. No, sir.

10 Q. It was substantially below the range that -- that
11 Rothschild said was the -- the range of values of the company,
12 correct?

13 A. That is a correct statement.

14 Q. Okay. Mr. Sheehan, when -- when Delphi emerges from
15 bankruptcy you expect to remain with the company, right?

16 A. I would hope so.

17 Q. And you expect that upon emergence Appaloosa is likely to
18 have a big role with the company, correct?

19 A. I don't know how you define a big role. They are entitled
20 to three members to our board of directors.

21 Q. Uh-huh.

22 A. You know the terms under the EPCA so I won't repeat them.

23 Q. Okay. So they will have substantial board representation.
24 They will hold a significant equity stake, fair?

25 A. They will hold a substantial equity stake, that's correct.

1 Q. Okay. And when the company does emerge from bankruptcy
2 you, as a member of senior management, will be eligible to
3 receive a bonus, correct?

4 A. That would be -- that would be the -- what's in the plan,
5 yes.

6 Q. Right. And -- and you cannot receive that bonus until the
7 company does emerge from bankruptcy, correct?

8 A. That is the way the plan is structured.

9 Q. Okay.

10 MR. ISENMAN: Your Honor, the Court's indulgence just
11 for one moment.

12 THE COURT: Okay.

13 MR. ISENMAN: Your Honor, I have no more questions
14 for this witness. Thank you.

15 THE COURT: Okay. Mr. Fox, you're going to point to
16 the deposition?

17 MR. FOX: I have no questions.

18 THE COURT: Okay. Any redirect?

19 MR. BUTLER: Briefly, Your Honor.

20 REDIRECT EXAMINATION BY

21 MR. BUTLER:

22 Q. Mr. Sheehan, during your cross examination you were asked
23 about event risks that you -- that the company considered, do
24 you recall that question and your answers?

25 A. Yes, I do.

1 Q. As chief restructuring officer of the company, did you
2 ever try to compile a list of event risks that were important
3 to you as the chief restructuring officer?

4 A. We -- we had -- we have considered the various event risks
5 and we have outlined them in a -- in a timeline that we refer
6 to, I would say, almost weekly in conjunction with our
7 manage -- weekly management meetings on our restructuring.

8 Q. Have you made presentations considering event risks to
9 anyone other than senior management?

10 A. We also present that to our statutory -- we've included it
11 in the statutory committee book and reviewed it with our
12 statutory committees at our monthly statutory committee
13 meeting.

14 Q. I'd like for you to turn, please, to Exhibit 102. It
15 should be in one of the orange books, I believe. I'll also put
16 a blowup up here for you so you can see it. Is Exhibit 102 the
17 event risks that you shared with the statutory committees?

18 A. Yes, this is a copy of the November 20th -- a page out of
19 the November 20th statutory committee book.

20 Q. All right. And briefly, sir, in your own words looking at
21 these event risks would you pick out the two most significant
22 ones, in your judgment, that the company faces?

23 A. The -- the -- the first one is the -- on February 29th we
24 have -- we've negotiated with the IRS and the PBGC to funding
25 waivers which would expire -- do currently expire on February

1 29th. And have been -- have provided us with -- the IRS and
2 the PBGC have been very constructive with us in working for a
3 plan to fund our pension plans. If we go past February 29th
4 we're going to have to -- we're going to have to deal with --
5 with renegotiation of those agreements. That's the first date.

6 The second is on March 31st. And on March 31st there's a
7 whole mess of things that occur, including that the UAW
8 no-strike clause expires, the Appaloosa EPCA terminates and the
9 GM agreements also would -- or GM may terminate the global
10 settlement agreement and that date.

11 Q. If any one of those three items that you've just
12 identified in fact occurred, in your judgment what would be the
13 impact on the company?

14 A. You know, we -- as I -- as I was describing in my
15 testimony a few moments ago, we've been exceedingly lucky or --
16 maybe I shouldn't say it's luck. You know, I think we've
17 worked really hard to keep the support of our customers, our
18 suppliers, our employees for that matter. And we -- we
19 strongly believe, we've talked about it very -- with all of our
20 stakeholders that to the extent that we lose the support of our
21 customers -- I talked about two billion dollars a month of new
22 business. If our suppliers lose confidence in our ability to
23 make payments to them and shorten payment terms, the impact on
24 our liquidity if we lose employee talent. So we -- we don't
25 know exactly when but we believe strongly that if this company,

1 having achieved what it's achieved, can't now exit and goes
2 into a -- a protracted process, that we run the risk of a
3 degradation in value of the enterprise.

4 Q. You testified just now that with respect to the first risk
5 you identified, which was the expiry of the PBGC waivers at the
6 end of February, that the PBGC has been very constructive in
7 negotiating with the company, is that -- do I have that right?

8 A. Absolutely.

9 Q. Why shouldn't the Court simply assume, Mr. Sheehan, that,
10 you know, the PBGC will rubber stamp an additional extension
11 then if they've been so constructive?

12 A. You know, I -- I haven't yet tried to do that. There has
13 been a fair -- fairly significant change in the leadership of
14 the PBGC. So I -- I do need to work with a different set of --
15 of individuals at the PBGC and -- and I think the IRS is -- has
16 been consistent. But I think also with the PBGC they're --
17 while they have been constructive, they have had asks each
18 time. They don't give away those waivers for free and if -- if
19 we are going past February 29th we're going past February 29th
20 because we haven't been able to emerge. And accordingly, there
21 will be, I would expect, I'm not trying to give them any more
22 leverage, but, you know, I would expect there would be an ask.
23 Q. Have the PBGC taken any action in these cases in the last
24 ninety days with respect to protecting their interests in
25 matters before the Court?

1 A. In conjunction with our DIP tenor extension motion they
2 did seek to -- what's the right word -- protect their liens or
3 perfect liens or to protect the position of the plans by --
4 with liens on assets.

5 Q. Any other transactions before the Court, in connection
6 with the debtors' activities within the last ninety days that
7 you can recall?

8 A. Not that I'm recalling off the top of my head.

9 Q. Okay. In your first declaration, in which you were asked
10 questions in cross examination, would you -- that declaration
11 discussed the exercise of the debtors' business judgment up
12 through the October 29th EPCA, is that correct?

13 A. that's correct.

14 Q. And just so we're clear, when we talk about EPCAs, how
15 many EPCAs have there been in this case?

16 A. There was the December 2006 EPCA, then the July 2007 EPCA
17 and then the October 29th amendment.

18 Q. And that's just an amendment, is that correct?

19 A. That's an amendment, that's correct.

20 Q. And each of the amendments on October 29th, November 14th
21 and December 3rd are proposed amendments to the EPCA, is that
22 correct?

23 A. That's correct.

24 Q. You were asked about some e-mails with Ms. Courio at
25 Exhibit 151 and in big type letters at the bottom there's a --

1 of that e-mail which you were not asked about on Exhibit 151,
2 was the EPCA still in effect, or something to that effect. Why
3 did you send that e-mail to Ms. Courio?

4 A. I appreciate your asking me that. We -- we launched the
5 DIP tenor extension on the back of the October 29th EPCA
6 amendment. And, you know, it was -- it's absolutely critical
7 to -- it was critical, at that time, for this company to extend
8 the tenor of that DIP. The DIP expired -- was to expire on
9 December 31. And to the extent that -- and so our -- our, if
10 you will, strategy had been to launch the tenor extension of
11 the consensual agreement of October 29th to allow for execution
12 on the DIP tenor extension. Which, as I said, is -- is
13 absolutely critical to this estate.

14 What I was trying to do with my e-mail to Norma was to
15 make it clear that -- because there was significant
16 consternation in the financial market among our DIP lenders
17 that the EPCA was terminated. There was a lot of, if you will,
18 that was what the talk in the financial community was, and what
19 I wanted to make sure was that, because it's important that you
20 appreciate that Norma is our DIP relationship manager. She is
21 responsible for the DIP not for exit financing. And the
22 intention here was to assist JPMorgan in getting our DIP
23 extended.

24 Q. Was there a precipitating event insofar as you know that
25 caused the market buzz, if you will, to increase about the

1 termination of the EPCA?

2 MR. ISENMAN: Your Honor, I think this does exceed
3 the scope of my direct examination -- I'm sorry, my cross
4 examination.

5 MR. BUTLER: He asked specifically about this
6 exhibit.

7 THE COURT: I think he's entitled to ask about the
8 exhibit.

9 A. The -- on the -- on Thursday, November 8th the plan
10 investors filed a -- I believe it was a 13(d) if I recall
11 properly but at least a public disclosure that caused some
12 concern that perhaps the EPCA had been terminated.

13 Q. Did you receive any calls from anyone after 13(d) was
14 filed?

15 A. Yes. Yes, I did.

16 Q. From whom?

17 A. A number of them from -- from -- well from JPMorgan, from
18 Citi Group, from, if my recollection is proper, other investors
19 in our DIP.

20 Q. Was there any correlation between those phone calls and
21 the press release the company issued the next day that was
22 previously asked about in this case?

23 A. They're directly correlated.

24 Q. I'd like to turn now, briefly if we could, to another
25 exhibit that you were asked about, which is Exhibit 44, one of

1 your memos to the board of directors. Is it typical -- I'm
2 sorry; I'll wait for you to get it. This is Exhibit 44, it is
3 in orange 2.

4 MR. ISENMAN: Orange 2?

5 MR. BUTLER: Orange volume 2.

6 THE WITNESS: Sorry. Go ahead.

7 Q. Is it typical, Mr. Sheehan, for you to send these types of
8 communications to the board of directors?

9 A. I send them quite regularly. It's a methodology that
10 we've used or a process that we've used within the company to
11 talk with our board in between board meetings about what's
12 going on in our Chapter 11 process.

13 Q. Why do you provide these communications?

14 A. The board of directors is quite interested in knowing
15 what's going on and rather than trying to convene the entire
16 group, which is -- you know, in a formal way, it's a way for me
17 to informally keep them up to date on what's going on.

18 Q. Now, Mr. Isenman, he asked you in this, about the third
19 paragraph I believe, and he read part of that into the record.
20 And the sentence in which you were talking about the re-
21 leveraging of things, when you were communicating this --
22 the -- this new development you start out with the word
23 unfortunately in that sentence, the sentence he focused you on.
24 Why were you telling the board of directors -- why did you
25 choose to use the word unfortunately in that communication?

1 A. Well, I think it was unfortunate in that it was
2 creating -- it was creating a challenge to be able to
3 reconstitute the -- the consensual agreement that we had
4 reached on September 6th. And hence it was unfortunate.

5 Q. Now the objectors were only concerned about your reference
6 in that paragraph to plan investors, but you referenced other
7 parties did you not?

8 A. I did.

9 Q. And who are those parties?

10 A. The -- the next sentence included the creditors committee,
11 the plan investors is what I wrote.

12 Q. and in the same paragraph you also said that they are
13 abandoning the philosophy of a settlement case for an absolute
14 priority case, what did you mean by that in your communication
15 to the board?

16 A. That -- that parties to the -- that the stakeholders
17 were -- whereas -- whereas we had treated, if you will, the
18 subordinated debt the MDL -- the subordinated debt and MDL
19 consistent with the unsecured creditors and had settled with
20 equity that we were receiving significant input that parties,
21 such as subordinated debt, the equity MDL, the plaintiffs had
22 to be impaired in this case as was called for by the absolute
23 priority rule under bankruptcy law. That a -- a higher -- a
24 lower party -- I think it says, basically, that a lower party
25 in the capital structure can't receive a distribution until

1 that higher party has been satisfied.

2 Q. As the company's chief restructuring officer, have you
3 ever thought of this case as an absolute priority case?

4 A. No, sir.

5 Q. And why is that?

6 A. Because it -- it starts with the premise that General
7 Motors has made significant financial contributions to this
8 case in order to allow the company to emerge from Chapter 11.
9 And the distributions that are available to these other parties
10 that we're discussing is a direct result of General Motors
11 subordinating its -- I don't know if subordinating is the right
12 word, but receiving a less of a recovery than it would
13 otherwise be -- perhaps be entitled to.

14 Q. In your direct examination you were asked a number of
15 questions about the company's business judgment with specific
16 reference to paragraph 43, among others, of your initial
17 declarations marked Joint Exhibit 1. Do you recall those
18 questions and answers?

19 A. Yes, sir.

20 Q. During the period from October 29th to the present, did
21 you have an occasion to give consideration to the factors that
22 should go into the company's business judgment as it thought
23 about the EPCA?

24 MR. ISENMAN: Objection, Your Honor. I certainly
25 didn't get into this in my cross examination.

1 MR. BUTLER: He opened the door with business
2 judgment, Your Honor, in the affidavit.

3 MR. ISENMAN: Your Honor, with respect I don't think
4 I ever used the words business judgment.

5 MR. BUTLER: I think you talked about paragraph 43 in
6 that section, which is all about business judgment in the
7 declaration. I mean, this is a business judgment case. And
8 this is what he talked about. Forty-three was -- of the
9 business judgment issues.

10 MR. ISENMAN: Your Honor, I -- I think I asked -- I
11 called his attention to a sentence in paragraph 43; I don't
12 think I asked him about his business judgment.

13 THE COURT: Well, you did ask him about quantifying
14 the downside of further delay.

15 MR. ISENMAN: I did ask him about that, Your Honor,
16 that's right.

17 THE COURT: Okay. So --

18 MR. BUTLER: I'm just trying to explore the elements.
19 I thought the cross examination was trying to attest to, among
20 other things, the business judgment of the debtors with respect
21 to this transaction.

22 THE COURT: Well --

23 MR. BUTLER: And that's what I was trying to talk
24 about.

25 THE COURT: He asked him about Mr. Sheehan's and the

1 debtors' assessment of the plan investors rights under the EPCA
2 and the right to terminate eventually. And he asked him about
3 the down side of letting that process ensue. If that's the
4 area you're getting into, I think you can -- you can respond --
5 you can ask him questions on that.

6 MR. BUTLER: Well, we covered the event risk, Your
7 Honor. I've been trying to extend this. I mean, I can --

8 THE COURT: All right.

9 MR. BUTLER: -- I can argue the rest of it in oral
10 argument.

11 THE COURT: Okay.

12 Q. The last area of questioning, Mr. Sheehan, I want to go
13 over with you is on direct examination you were asked about why
14 you didn't file a lengthy supplemental declaration with respect
15 to the changes made over the last couple of days, do you recall
16 those questions?

17 A. I do.

18 Q. Okay. Is -- did you have any intention as to whether your
19 testimony in the first and second affidavits would be
20 applicable to this -- this hearing today? The first two
21 declarations, all the things you've said in those declarations,
22 do you intend them to apply today?

23 A. Well the -- the business judgment that I made or have been
24 making during the last months is the -- the same business
25 judgment I had to make in reaching the EPCA amendment on

1 December 3rd.

2 Q. And is there any element of your testimony in those
3 declarations that you would like to withdraw as it relates to
4 this hearing today?

5 A. No, sir.

6 Q. Okay.

7 MR. BUTLER: I have no further questions, Your Honor.

8 THE COURT: Okay. Let me just --

9 MR. ISENMAN: Your Honor, I have some very brief re-
10 cross.

11 THE COURT: All right. Fine.

12 RECROSS EXAMINATION BY

13 MR. ISENMAN:

14 Q. Mr. Sheehan, just to clear up one thing that I believe Mr.
15 Butler said, I didn't ask you about whether you had filed a
16 lengthy supplemental declaration, I asked you if you filed any
17 declaration, correct?

18 THE COURT: We know he didn't.

19 MR. ISENMAN: Okay.

20 Q. If you could turn back to --

21 MR. ISENMAN: Strike that.

22 Q. You discussed, just now with Mr. Butler, three events that
23 you were particularly concerned about, correct?

24 A. Yes, sir.

25 Q. And one of them was whether the PBGC would further extend

1 its waiver?

2 A. Yes, sir.

3 Q. And the second one was whether or not the unions would
4 waive -- help me out here --

5 A. It's not really a waiver. It's that come March 31st, if we
6 have not been able to -- let's just say emerge from Chapter 11,
7 then they will -- there will be the event risk that they would
8 be able to strike.

9 Q. Okay.

10 A. And then the -- go ahead, sorry.

11 Q. And the third one was something having to do with GM,
12 right?

13 A. The GM settlement agreement would be terminable at that
14 point in time.

15 Q. Okay. Now, it's correct, is it not, that you have not
16 actually asked PBGC whether they would be willing to further
17 extend their waiver, correct?

18 A. That is correct.

19 Q. Okay. And you have not, at this point, asked the unions
20 whether they would waive their -- their -- this ability to
21 strike, correct?

22 A. That's correct.

23 Q. And you have not asked GM whether it would waive its
24 termination rights, correct?

25 A. No, I haven't.

1 Q. Okay. Thanks.

2 A. Sorry.

3 Q. You were responding correct, right?

4 A. I responded correct. I was also looking over to see, you
5 know, maybe I'd get one. I apologize, sorry.

6 Q. That's fine. The -- Mr. Butler also asked you some
7 further questions about Exhibit 151, maybe you could get that
8 back in front of you? Okay. Do you have 151 in front of you?

9 A. I do.

10 Q. Okay. And Mr. Butler asked you, in particular, about a
11 sentence that appears about three quarters of the way down. It
12 says, "Spread the word, Delphi's EPCA has not been terminated."

13 A. Correct.

14 Q. Okay. And so your intention was to make clear that the
15 August 2nd EPCA was still in effect, correct?

16 A. Absolutely. Norma -- what I did is I forwarded the press
17 release that we had issued at 9 o'clock that morning and my e-
18 mail to Norma where I forwarded it. My exact words were,
19 spread the word, Delphi's EPCA has not been terminated. Point
20 being that our DIP lenders did not need to be concerned and
21 they could still move forward with signing their amendment
22 pages.

23 Q. Right. But as you previously testified, you knew at that
24 time that the plan investors were not willing to move forward
25 on the August 2nd EPCA, true?

1 A. That was my testimony, correct.

2 Q. Okay. And if you would just quickly turn with me to
3 Exhibit 761.

4 A. 761?

5 Q. Which is in the third binder -- oh, I'm sorry, 161.

6 A. 161?

7 Q. Yes.

8 A. I have 161 in front of me.

9 Q. In my binder it actually says 761, but that was my
10 mistake, 161.

11 A. I have 161 in front of me.

12 Q. And this is a -- another e-mail sent on your behalf to the
13 board of directors, correct?

14 A. That's correct. It's an e-mail that I drafted for our
15 board.

16 Q. Okay. And it's -- it was sent on November 11th, correct?

17 A. Yes, sir.

18 Q. Okay. And if you turn to the second page of that?

19 A. Yes, sir.

20 Q. Okay. And it -- do you see the first full paragraph?

21 MR. ISENMAN: The Court's indulgence.

22 Q. Do you see that first full paragraph?

23 A. Yeah, I do.

24 Q. Okay. And it says, "As I communicated to you on Friday
25 morning, Appaloosa filed a required SEC filing on Thursday

1 evening which disclosed that the EPCA amendments would not
2 become effective because the Appaloosa filing was interpreted
3 in the market as an announcement that the EPCA itself may have
4 been terminated. Delphi issued a press release on Friday
5 confirming the continued effectiveness of the Appaloosa EPCA
6 and the new timetable approved by Judge Drain." Did I read
7 that correctly?

8 A. Yes, sir.

9 MR. ISENMAN: The Court's indulgence.

10 Q. And Mr. Sheehan, just to continue in that paragraph, it
11 says -- see the sentence that begins with nevertheless?

12 A. I do see that sentence.

13 Q. Okay. It says, "Nevertheless there was continued
14 deterioration in Delphi's debt securities pricing throughout
15 last week, which has created increased concern by our
16 stakeholders as to whether Delphi can successfully emerge from
17 Chapter 11 in the near term." Did I read that correctly?

18 A. You did.

19 Q. So --

20 MR. ISENMAN: Your Honor, I think I have nothing
21 further.

22 THE COURT: Okay. Well, that last bit was certainly
23 cryptic but maybe you'll explain to me your intentions at oral
24 argument for raising that point, whatever it was worth.

25 I have a question; you were here for Mr. Tepper's

1 examination weren't you?

2 THE WITNESS: Yes, I was.

3 THE COURT: You heard him say, and I confess this was
4 news to me, that one of the members of the Goodwin Proctor
5 group had been a plan investor?

6 THE WITNESS: There is a member --

7 THE COURT: Is that right?

8 THE WITNESS: Yeah, I'm generally aware of that.
9 Yes, sir.

10 THE COURT: What member is that?

11 THE WITNESS: I believe that -- I believe they go by
12 initials in the Goodwin Proctor but I'll refer to them by their
13 street name which is Silver Point Capital.

14 THE COURT: And when did they opt out?

15 THE WITNESS: Opt out?

16 THE COURT: Do you remember when they -- when they no
17 longer were a plan investor?

18 THE WITNESS: They are still a plan investor.

19 THE COURT: They still are?

20 THE WITNESS: Yes, sir.

21 THE COURT: Under this agreement?

22 THE WITNESS: To -- they're an -- they're an
23 additional investor. There are three -- there's Appaloosa
24 itself and then there are the five co-investors. There are
25 then the additional investors, Your Honor. And at least -- so

1 I don't know every additional investor. I am aware, from both
2 discussions with Silver Point themselves as well as with other
3 parties -- peer -- just other parties that they're an
4 additional investor. That's all I can say about that.

5 THE COURT: And they object to their own agreement?

6 THE WITNESS: This has been a very strange case.

7 MR. BRILLIANT: Your Honor, Silver Point is not an
8 objector on this agreement. And the -- that that they're a
9 backstopper as an additional investor is disclosed in the
10 2019 --

11 THE COURT: So -- I'm sorry, so they're not a member?

12 MR. BRILLIANT: they're additional investors.

13 THE COURT: No, but they're not a member of your
14 client group?

15 MR. BRILLIANT: They are not an objector in
16 connection with this motion. They -- they objected to the MDL,
17 they did not object to the disclosure statement or to the EPCA
18 motion.

19 THE COURT: Okay. All right. You can step down.

20 MR. BUTLER: Your Honor, I wonder if it would be
21 appropriate to take a brief recess.

22 THE COURT: All right, you have one more witness.

23 MR. BUTLER: We have one more witness.

24 THE COURT: All right. Are there any other
25 witnesses? Okay. I'll be back in a little over five minutes.

1 (Recess from 4:32 p.m. to 4:43 p.m.)

2 THE COURT: We're back on the record in Delphi. Mr.
3 Sheehan, I apologize. I realized I had two questions I wanted
4 to ask you. You're still under oath.

5 THE WITNESS: I appreciate that.

6 THE COURT: You were asked during your examination
7 about the possibility of getting a waiver from the PBGC at the
8 end of February or before the end of February when you would
9 need one. With respect to the last waiver, was there a waiver
10 charge or waiver fee required by the PBGC?

11 THE WITNESS: Yes, there was.

12 THE COURT: Do you remember the amount of that?

13 THE WITNESS: The agreement I reached with the PBGC
14 and the IRS, to be clear, the IRS actually grants the waivers
15 but the PBGC does most of the negotiations with me, was that I
16 would be required at the time of emergence from Chapter 11 to
17 contribute into the plans an additional twenty million dollars
18 over and above that that is otherwise due.

19 THE COURT: As the company's chief restructuring
20 officer, do you generally keep an eye on the direct costs of
21 the Chapter 11 case; i.e., the professional's cost?

22 THE WITNESS: I do, as both the chief restructuring
23 officer and as a member of the fee committee in this case, sir.

24 THE COURT: Do you have an estimate of the average
25 monthly direct costs of the case?

1 THE WITNESS: The average monthly direct costs of the
2 case is between twelve and fifteen million dollars a month.

3 THE COURT: Okay. All right. Anyone want to examine
4 Mr. Sheehan on those questions or his answers? Okay. You can
5 step down.

6 MR. BUTLER: Your Honor, the debtors' final witness
7 in support of its direct case is that of Robert S. Miller, Jr.
8 or Steve Miller, the company's Executive Chairman. Mr. Miller
9 has filed a two -- prepared and signed two declarations in this
10 case. They are set forth, marked highly confidential, at joint
11 exhibits 5 and 6. I'd now like to move those declarations into
12 evidence subject to cross examination.

13 THE COURT: Okay.

14 MR. ISENMAN: Your Honor, we have similar objections
15 to the prior ones. They are again simply that we object to
16 information that is hearsay being admitted for the truth of the
17 matter asserted but do not object to its admission to show Mr.
18 Miller's own state of mind. And I can again hand those up to
19 the Court if that will be helpful.

20 THE COURT: All right. Is that the only basis for
21 your objections?

22 MR. ISENMAN: In a few places, Your Honor, Mr. Miller
23 characterizes the EPCA as Mr. Sheehan did. But, again, that
24 just goes to his understanding of it not --

25 THE COURT: Okay. So as long as the affidavit --

1 affidavits are admitted as evidence of his or the board's
2 understanding of the facts including the EPCA, there's no
3 objection.

4 MR. ISENMAN: That's correct, Your Honor.

5 THE COURT: Okay. I'll admit it on that basis. Or
6 admit them on that basis.

7 (Declarations of Steve Miller were hereby received as Debtors'
8 Exhibit 5 and 6 for identification, as of this date.)

9 THE COURT: Okay. Then, you want to cross examine,
10 Mr. Miller?

11 MR. ISENMAN: I would like to, yes, Your Honor.

12 (Witness is sworn)

13 THE COURT: Okay. You can go ahead.

14 CROSS EXAMINATION BY

15 MR. ISENMAN:

16 Q. Mr. Miller, you have been present throughout the hearing
17 today, correct?

18 A. Yes.

19 Q. And you've been present for each of the prior witnesses'
20 testimony, correct?

21 A. That is correct.

22 Q. I will ask you some questions that I asked Mr. Sheehan as
23 well, you submitted two declarations which are dated, I believe
24 November 2nd and November 21st, correct?

25 A. Correct.

1 Q. And you have not submitted a supplemental declaration with
2 respect to the December 3rd EPCA, correct?

3 A. That is correct.

4 Q. And you were deposed, I believe, last week, but you have
5 not been deposed since the filing of the December 3rd EPCA,
6 correct?

7 A. That is correct.

8 Q. Mr. Miller, since the August 2nd EPCA was signed you have
9 not authorized anyone to go out to the market and see if there
10 was any other potential equity investor, correct?

11 A. Correct.

12 Q. And when the October EPCA was terminated Delphi announced
13 to the market that the August EPCA was still in force,
14 corrected?

15 A. Correct.

16 Q. And, at the time that you announced that the August 2nd
17 EPCA was still in force, you knew the plan investors were not
18 willing to proceed with the August EPCA, correct?

19 A. We knew that implementing the August EPCA was impractical
20 at that time, yes.

21 Q. And you did not announce to the market that proceeding
22 with the August 2nd EPCA was impractical, correct?

23 A. Correct.

24 Q. Now, Delphi never made any attempt to enforce the terms of
25 the August 2nd EPCA against the plan investors, correct?

1 A. One of the conditions to implementing the August EPCA was
2 to raise the financing contemplated in that EPCA. Because of
3 the changes in the capital markets and the investigations we
4 did following that EPCA we did not believe that seeking
5 enforcement would be effective and the maximum possible
6 recovery would be limited.

7 Q. So the answer is you never did attempt to enforce the
8 terms of it, correct?

9 A. We continued in discussions to find a resolution that
10 would work rather than contemplating litigation for things that
11 wouldn't work.

12 Q. Great, thank you.

13 MR. ISENMAN: Your Honor, the Court's indulgence for
14 just one moment.

15 Q. Now, under the current version, the December 3rd EPCA,
16 there's a condition on closing concerning and interest expense
17 cap, correct?

18 A. That is correct.

19 Q. And am I right that first became a condition under the
20 August 29th EPCA?

21 A. Frankly, I've forgotten when it first became a condition.

22 Q. But that's something that was added after the August 2nd
23 EPCA, we can agree on that, right?

24 A. I believe that to be correct.

25 Q. And the effect of that new condition has been to shift the

1 risk of future fluctuations in interest rate from the plan
2 investors to the company, correct?

3 A. On that -- yes, on that narrow precise issue there's been
4 a transfer of risk by virtue of the inclusion of an interest
5 rate cap as a condition.

6 Q. Okay. So that means that depending on what happens with
7 interest rates it may very well be that this condition means
8 that the plan investors are not going to need to close on this
9 December 3rd EPCA, and in that case they might be able to
10 renegotiate further concessions from Delphi, correct?

11 A. We certainly would have wished for an absence of the cap
12 or a higher looser cap. We negotiated strongly, argued
13 strongly for it, but at the end of the day we had to vote on
14 that which was presented to us, not that which we wished we
15 could have.

16 Q. So you don't disagree with what I said?

17 A. I forgot everything you said but I didn't find anything
18 that I wouldn't agree on.

19 Q. Should I repeat it?

20 THE COURT: No.

21 A. No.

22 Q. I guess its unanimous then. Now, Delphi believed that it
23 could not unilaterally terminate the EPCA, correct?

24 A. We believed there were serious -- we were advised there
25 were serious legal problematic issues if we were to attempt

1 unilateral termination of the EPCA, yes.

2 Q. So, even in the situation where the plan investors refused
3 to proceed under the terms of the EPCA it simply let -- were
4 willing to let it expire at the end of March, the company still
5 couldn't walk away, to your understanding, without incurring
6 liability, correct?

7 A. Our understanding is that it would have been very
8 problematic. We were in this period of time unable to raise
9 the contemplated financing imbedded in the original EPCA. And,
10 yes, one of the alternatives would be just to let it expire.
11 But as has previously been testified here passage of time is
12 our enemy and we did not choose that path.

13 Q. And the liability that you were concerned about, that you
14 just referred to in your previous answer, and if the company
15 were to walk away from the August 2nd EPCA numbers, among other
16 things, the alternative transaction fee?

17 A. Well, that was a minor concern. The major concern is
18 losing the investor group we had before us knowing that we
19 required an investor group in order to get out of Chapter 11.
20 And I repeat, we feel extreme pressure to get this done on as
21 timely a basis as we can, and we were unwilling to take the
22 risk of a prolonged process.

23 Q. Understood. Under the most recent iteration, the December
24 3rd EPCA, the assumed TEV that's used to calculate the plan
25 investors buy-in that's something less than eleven billion,

1 correct?

2 A. You mean, the discounted TEV at which the investors can
3 buy in, yes.

4 Q. That's what I'm referring to, yes. That was under eleven
5 billion?

6 A. Yes.

7 Q. And that's -- you're familiar with the Rothschild range of
8 values --

9 A. Yes.

10 Q. -- for the company? And at below eleven billion that's
11 significantly below Rothschild's range of values for Delphi,
12 correct?

13 A. You're correct.

14 Q. And it's fair to say, although the company did not have
15 to --

16 MR. ISENMAN: Strike that.

17 Q. It's fair to say that the company didn't have a choice of
18 putting in some different number with respect to the assumed
19 TEV other than the one that was agreed to?

20 A. The buy-in TEV was the product of heavy multi-lateral
21 negotiation. This is where it ended up. We were told that
22 this is the offer, it's not going to be moved further, and the
23 choice we therefore presented to our board was to proceed with
24 this offer or stop this process and try to go on down some
25 other path. We included in the discussion was an assessment

1 made by the board, as advised by our advisors and our own
2 thinking, as to whether the offer on the table represented
3 market. This has been a very transparent process and we have
4 not seen other investors arise to the surface, except for a
5 rumored transaction that came to the surface about a week ago.

6 Q. So the company did not feel that it had any ability use a
7 different number then the assume TEV that was used for the
8 separate third EPCA, right?

9 A. The TEV number that is in there was heavily negotiated
10 along with scores of other terms and conditions in this entire
11 agreement. And we eventually got to today where we have the
12 support of the statutory committees, General Motors, and the
13 plan investors and this is the best deal that we know of.

14 Again, the board was not asked to vote on whether they would
15 wish for something else, they were asked to vote on whether to
16 take what is in front of us or delay the process of emergence.

17 Q. And, you were present before when I asked Mr. Sheehan
18 whether anyone had actually quantified the amount of delaying
19 emergence? You were present for that, right?

20 A. Yes.

21 Q. And Mr. Sheehan explained various concerns he had about
22 delay.

23 A. Yeah.

24 Q. But did -- tell us that no one had actually calculated the
25 actual costs, do you recall that testimony?

1 A. I recall the testimony I don't recall that he gave you an
2 actual by example calculation. But this is a judgment call.
3 I've been chairman of this outfit for about thirty months, been
4 through a lot, been worried about event risk all through this
5 Chapter 11 process. And, in fact, our failure to emerge
6 according to our original plan by July 31st resulted in a macro
7 economic event risk hitting us which is why we're here having
8 this discussion today. I wish we had gotten out when the times
9 were good, when we could have raised the money that was
10 contemplated in the original EPCA. We didn't get there, we got
11 hit by an event risk. And you're asking me to -- how could
12 someone six months ago have quantified this risk, I don't know.
13 And therefore, I don't know how to quantify the next event
14 risk. The event risks that were pointed out here include, what
15 about the PBGC, why didn't we go ask them. I know what would
16 happen if I would go ask them, they'll say come back at the end
17 of February and we'll make a judgment then as to what we would
18 need. And the same would go for General Motors, I would guess,
19 and for the unions, I would guess. They will wait until time's
20 up before agreeing prematurely to waive those conditions. And
21 even going to them will be fighting, because it says we're
22 worried about not getting out on time. We have focused on
23 trying to get out as quickly as we can. We're hoping to get
24 out by the end of February. Now, you can admonish me for going
25 beyond the question.

1 Q. It's not my position to admonish you, Mr. Miller. I will
2 point out I think my question was, do you recall that
3 testimony?

4 A. Yes.

5 Q. And I appreciate what you just said but just to verify it,
6 as of today the company has not requested, to your knowledge,
7 further extension from the PBGC, right?

8 A. That is correct.

9 Q. And as of today it's not your understanding that the
10 unions actually have a right to strike on March 31, 2008 if the
11 company hasn't emerged from bankruptcy, correct?

12 A. Correct.

13 Q. And none -- GM, as of today, has not informed the company
14 that it will cease doing business with the company if it hasn't
15 emerged from bankruptcy as of March 31st, correct?

16 A. That is correct.

17 Q. And Toyota has not informed the company that it will cease
18 doing business with the company if it hasn't emerged from
19 bankruptcy by March 31st, correct?

20 A. During that brief twenty-four hour period between the
21 Appaloosa filing and the time we put out a press release we got
22 inquiries into our sales people and into our president,
23 enquiring about what that meant. Because our customers were
24 very concerned. And part of the reason we were putting out the
25 press release was to calm our customers down. We also had a

1 big impact on the banks with whom we were trying to get our DIP
2 loan extension, which was also critical to us. But the
3 fragility of the confidence in our company is something that
4 any of our stakeholders had better take into account when they
5 calculate whether they want to impose a delay on this process
6 or let us get this done.

7 Q. And Toyota has not told you --

8 THE COURT: I think you should move on.

9 MR. ISENMAN: Okay. Thank you, Your Honor.

10 Q. You were present for Mr. Tepper's testimony?

11 A. Yes.

12 Q. And you heard his testimony about Appaloosa's holdings in
13 various securities issues by Delphi, right?

14 A. Yes.

15 Q. So it's fair to say, you already knew this, that Appaloosa
16 is deeply indebted in the company's capital structure, right?

17 A. Correct.

18 Q. Okay. And it's your view that if the company were to try
19 an alternative financing arrangement using different plan
20 investors that the company would have to confront the
21 possibility that Appaloosa would use its position as deeply
22 imbedded in the capital structure to frustrate any new plan
23 investor, correct?

24 A. I do not know how Mr. Tepper would vote if confronted with
25 a plan or reorganization that included other plan investors.

1 My guess is he would vote on his self-interest regardless of
2 whatever he might say in advance of that. We cannot know that
3 until we get there. The alternate plan investors who
4 approached us last week but never actually delivered a
5 proposal, and in fact, somewhat dismissed the risk of adverse
6 vote by Tepper, on the basis that his holdings were
7 concentrated in the more junior securities.

8 Q. Okay. I apologize, I'm not sure whether you answered my
9 question or not.

10 A. I'm sorry, I tend to wander off.

11 THE COURT: I heard it.

12 THE WITNESS: Okay. Thank you.

13 Q. Let me refer you, if I may, to Exhibit 176. Mr. Miller,
14 do you have 176 in front of you?

15 A. Yes, I do.

16 Q. And is this an e-mail from you to Mr. Yaku?

17 A. Yes.

18 Q. Who is the chairman of the equity committee?

19 A. That is correct.

20 Q. Okay. And this was the e-mail that was sent on October
21 30th?

22 A. That is correct.

23 Q. And again, I don't want to insult you, but at the time you
24 sent this e-mail it was your intention to be truthful, correct?

25 A. That is correct.

1 Q. And in the third paragraph of your e-mail --

2 A. Yes.

3 Q. -- it begins "at the same time."

4 A. Correct.

5 Q. You see that, it says "at the same time you must recognize
6 that Delphi cannot propose plan recoveries that are not
7 supported by our plan investors in the investment agreement, or
8 by GM in the GM settlement agreements," you see that?

9 A. Correct.

10 Q. And that was your statement to Mr. Yaku?

11 A. Yes.

12 Q. And in affect it is your view that Delphi could not
13 propose a plan recovery that's not supported by the plan
14 investors?

15 A. Right.

16 Q. Is it the board's practice to circulate draft minutes
17 sometime following each board meeting before they're adopted by
18 the board, correct?

19 A. That is correct.

20 Q. And it's your practice to review those draft minutes,
21 correct?

22 A. Yes.

23 Q. And, you generally have found --

24 MR. ISENMAN: Strike that.

25 Q. There's never been an instance where you have found

1 something material that was omitted from those minutes,
2 correct?

3 A. That is correct.

4 Q. You never said wait a second, we discussed this as well,
5 make sure you add that to the minutes?

6 A. I do not recall such a manner.

7 Q. So it's your view that the minutes accurately describe
8 what occurred at board meetings, correct?

9 A. That is true. Our board meetings are attended by a number
10 of professionals, all of whom poured carefully over the minutes
11 before they are sent around for review by the board members.
12 Therefore, it's not surprising to me that I don't find things
13 they omitted.

14 Q. So if something of import occurred at a board meeting you
15 would expect it to be in the minutes, correct?

16 A. If everything that happened in every board meeting were to
17 be in the minutes, you know, there wouldn't be enough room in
18 this courthouse to truck in all the minutes. So I can't say
19 there might not be something that someone regarded as important
20 that didn't get mentioned. But by and large, our professional
21 do the best job they can, including our in-house counsel, of
22 making sure the board minutes best reflect those things that in
23 the debtors' eyes are critical to the decisions made by the
24 board.

25 Q. And you have worked very hard in connection with this

1 bankruptcy, right?

2 A. Well, I think so.

3 Q. And you have foregone a fair amount of income that you
4 could have acquired otherwise had you been doing something
5 else, right?

6 A. I believe that's fair.

7 Q. And at the time that Delphi does emerge from bankruptcy,
8 at that point, you will be eligible to receive a well-deserved
9 cash bonus, correct?

10 A. The board is considering including me in the emergence
11 cash program. I have no plans to stay with the company beyond
12 that therefore would be ineligible for any of the ongoing
13 salary or equity awards that might ensure.

14 Q. Right. But you would be eligible for a cash bonus?

15 A. Well, that's up to the board. I have no entitlement and
16 really have not had any meaningful discussion as to what it
17 might be.

18 MR. ISENMAN: The Court's indulgence, Your Honor, I
19 think I'm almost done.

20 Q. Mr. Miller, you mentioned that you do not intend to be
21 with the company after emergence from bankruptcy but it's your
22 expectation that a number of members of senior management will
23 continue with the company when it emerges, correct?

24 A. That is my expectation and my hope.

25 Q. Okay. And you mentioned that, although you would at most

1 be eligible to receive some sort of cash reward, there is other
2 compensation arrangements contemplated for senior management
3 and staying on, right?

4 A. Correct.

5 Q. And that compensation includes, among other things,
6 restricted stock units, correct?

7 A. Correct.

8 Q. So under this senior management could be awarded
9 restricted stock units?

10 A. Yes.

11 Q. Mr. Miller, I appreciate it.

12 MR. ISENMAN: Your Honor, I have no more questions
13 for this witness.

14 THE COURT: Okay. Mr. Fox? Any redirect?

15 MR. BUTLER: Your Honor, we have no redirect.

16 THE COURT: Okay. Mr. Miller, you just answered a
17 number of questions about the potential awards of emergence
18 bonuses and/or going forward --

19 THE WITNESS: Yes.

20 THE COURT: -- and executive compensation, to your
21 knowledge as a member of the board, did either of those
22 eventualities affect the board's deliberation in respect of the
23 EPCA amendment?

24 THE WITNESS: I have absolutely no evidence that any
25 of the prospective post-emergence equity arrangements or the

1 emergence cash arrangements or any of that, which has been in
2 our plan since October of 2005, have any impact on the
3 immediate discussions with the plan investors. We have at all
4 times had this process controlled by our board of directors,
5 not by management, and as advised by professional compensation
6 experts and we will be involved in discussions with our
7 creditors' committee going forward as to the appropriateness to
8 the overall amounts that are to be awarded. As you well know,
9 we compete in the marketplace when we buy steel, when we buy
10 other goods that come into our factories. And we also compete
11 in the marketplace for executive talent. With your concurrence
12 and at times greatly done, you supported the notion of having
13 incentive compensation for our management group here. That
14 helped me, helped us keep our management group in tact. The
15 company, as you know has on all of its operating metrics beaten
16 its budgets, beaten its prior years, and performed the best
17 levels in this company's history. And the reason we're having
18 a big discussion here in this courthouse about how to share the
19 value that's been created, is because value was created. It's
20 perfectly reasonable and logical that the new owners of the
21 business going forward will want to have a retained and
22 motivated management group. And that will be subject to a
23 market test, testified to by professional outsiders, and done
24 at consultation with the creditors' committee.

25 THE COURT: Okay. Anyone want to ask --

1 THE WITNESS: I realize I went way beyond your
2 questions, sir.

3 THE COURT: Okay. Does anyone want to ask Mr. Miller
4 anything about that question or answer? Okay. You can step
5 down, sir.

6 THE WITNESS: Thank you.

7 THE COURT: Okay. So do the parties want to address
8 the exhibits now?

9 MR. BUTLER: Yes, Your Honor.

10 MR. BRILLIANT: Your Honor, can I have thirty seconds
11 to sort of gather my --

12 THE COURT: Sure. It will take Mr. Butler thirty
13 seconds to get rolling, so --

14 MR. BRILLIANT: Thank you, Your Honor.

15 MR. BUTLER: Your Honor, I believe there have been
16 211 exhibits that have been designated jointly by the parties
17 in this case. Exhibits 1 through 6, which had been subject to
18 objection, I think have now all been admitted.

19 THE COURT: Those are the declarations, right?

20 MR. BUTLER: Those are the declarations, Your Honor.
21 Exhibits 7 through 10, which are the Delphi-Appaloosa
22 investment documents. Exhibit 11 through 16, which are the
23 superseded first amendment documents. Exhibit 17 through 21,
24 which were the superseded restated documents. Exhibits 22
25 through 27, which are the global settlement agreement master

1 restructuring agreement with General Motors. Exhibits 28
2 through 33, which are documents in connection with the joint
3 plan. Exhibits 34 through 41, which are materials presented to
4 Delphi's board of directors.

5 MR. ISENMAN: Your Honor, may I interrupt for a
6 moment? We had a number of objections to some of these.
7 Parties met and conferred, and my understanding that with
8 respect to 34 through 41 the resolution of the parties was that
9 we withdrew those objections, which were on hearsay grounds,
10 provided that they were admitted not for the truth of the
11 matter asserted but merely to show what information was
12 provided to the board.

13 MR. BUTLER: Let me take this one so that the record
14 can be clear then, Your Honor. Let me simply move the
15 admissions of document 7 through 33, to which that objection
16 doesn't apply and I'll address the next group.

17 MR. FOX: That same objection applies to 29, which is
18 the September 6th disclosure statement, which is not to be
19 admitted for the truth of the matters asserted.

20 THE COURT: Okay.
21 (Delphi-Appaloosa Investment Documents were hereby received as
22 Debtors' Exhibits 7 through 10 for identification, as of this
23 date.)
24 (Superseded First Amendment Documents were hereby received as
25 Debtors' Exhibits 11 through 16 for identification, as of this

1 date.)

2 (Superseded Restated Documents were hereby received as Debtors'
3 Exhibits 17 through 21 for identification, as of this date.)

4 (Global Settlement Agreement Master Restructuring Agreement
5 With GM were hereby received as Debtors' Exhibits 22 through 27
6 for identification, as of this date.)

7 (Documents in Connection With the Joint Plan were hereby
8 received as Debtors' Exhibits 28 through 33 for identification,
9 as of this date.)

10 MR. BUTLER: So now, I'm going to Exhibits 34 through
11 41 which were the materials presented to Delphi's board of
12 directors as well as Exhibits 42 through 49 which were other
13 communications of Delphi's board of directors. We move their
14 admission. We agree that they're not admitted for the truth of
15 the matter asserted but rather as communications or
16 presentation to the board, when they board understood while it
17 deliberated.

18 THE COURT: Okay. So they'll be admitted on that
19 basis.

20 (Material Presented to Delphi's Board of Directors were hereby
21 received as Debtors' Exhibits 34 through 41 for identification,
22 as of this date.)

23 (Communications of Delphi's Board of Directors were hereby
24 received as Debtors' Exhibits 43 through 49 for identification,
25 as of this date.)

1 MR. FOX: Your Honor, 45 and 49 there was no
2 objection.

3 THE COURT: Well, they're admitted.

4 MR. FOX: Okay. But without the hearsay.

5 THE COURT: Without the hearsay.

6 MR. BUTLER: The next set of exhibits we address are
7 Exhibits 51 through 54. These are presentations that were
8 presented to the joint meetings of the Delphi statutory
9 committees. And there have been objections I think lodged to
10 those, I don't know who wants to present those. We certainly
11 can argue that they've been admitted in prior hearings of this
12 Court.

13 MR. ISENMAN: I may be mistaken about this, Your
14 Honor, but I was under the impression that we resolved this one
15 as well.

16 MR. BUTLER: If we haven't

17 THE COURT: On the same grounds that --

18 MR. ISENMAN: Same grounds, Your Honor.

19 THE COURT: Fine.

20 MR. BUTLER: That's fine. That's good -- so 51
21 through 54 would come in?

22 MR. ISENMAN: Mr. Butler, isn't it 50 to 54?
23 (Presentation to Joint Meeting of Delphi Statutory Committee
24 were hereby received as Debtors' Exhibits 50 through 54 for
25 identification, as of this date.)

1 MR. BUTLER: 50 to 54, sorry. The next group of
2 documents are minutes of meetings held by the board of
3 directors. This is item 55 through 61. And there was also --
4 I thought the bondholders had objections here as to hearsay and
5 inadmissible? Are you okay with these coming in?

6 MR. ISENMAN: 55 through 61 we resolved the hearsay
7 objection, I believe. We agreed that this was simply a --
8 (Board Minutes were hereby received as Debtors' Exhibits 55
9 through 61 for identification, as of this date.)

10 THE COURT: Memorial of what the board considered?

11 MR. ISENMAN: Correct, Your Honor. We had a
12 different issue with respect to these board minutes, and that
13 was that there are a substantial number of redactions in the
14 board minutes. We asked for a privilege log, initially we were
15 told that the things had been redacted, most of them are not
16 relevant to the issues at hand. And at about midnight last
17 night we received a privilege log, and we appreciate that,
18 better late than never. That privileged log disclosed, Your
19 Honor, that in fact virtually everything that had been redacted
20 was highly relevant. It was redacted apparently on privilege
21 grounds but it was things that apparently the -- that the board
22 relied upon. And I think that you make reference in, I
23 believe, paragraph 23 of their reply to -- they're relying on
24 some of this. So it's our view that it should not come in in
25 this redacted state, it's going to come in under the rule of

1 completeness, Rule 106, it ought to come in in unredacted form.
2 Particularly, if the company is asserting that -- that is was
3 relying upon advice of counsel.

4 MR. BUTLER: Your Honor, I actually believe that the
5 matters were either privileged. The matters -- the
6 presentations that I make to the board are, in fact, privileged
7 and not subject I think to invasion of the privilege. And with
8 respect to the other elements of those minutes I believe that
9 there are many things that are considered at board meetings
10 other than EPCA amendments. And those matters have been
11 redacted from the production.

12 MR. ISENMAN: Your Honor, if I could be heard very
13 briefly on that? The issue for us is that the debtor is
14 attempting to use the privilege as sort of a shield. They're
15 saying we're relying on our lawyers for this. But they're also
16 trying to protect it from disclosure and that's -- I don't
17 think that's appropriate.

18 THE COURT: Well, it's not particularly meaningful to
19 me simply to hear that lawyers told them that, in their
20 judgment, as a legal matter appropriate to proceed as the board
21 did, since I don't know what the basis of that was. And if
22 that's all the debtor is saying I think that they're not --
23 they're not sufficiently using it as a sword against you. I'm
24 sure at oral argument I will hear legal analysis from both
25 sides on the relevant issues, and that's what I'm going to

1 focus on.

2 MR. BUTLER: So, Your Honor, that would be -- and I
3 don't think there's any objection to the draft of 62 and 63, so
4 I believe that means all the minutes come in.
5 (Draft minutes were hereby received as Debtors' Exhibits 62
6 through 63 for identification, as of this date.)

7 MR. BUTLER: So we're up now to document 64, Exhibit
8 64. Exhibit 64 through 67 -- or through 68 were the various
9 lists of scenarios and evaluations prepared by Rothschild. And
10 I believe that there's now no pending objection to those.

11 MR. ISENMAN: Again, Your Honor, as long these are
12 coming in for information considered by the board and not for
13 the truth of the matter asserted, we don't have an objection.
14 That I believe was what the agreement was that we reached with
15 the debtors.

16 MR. BUTLER: That's correct. They are what they are.

17 THE COURT: All right. That's fine. But can you
18 bring me up to date. Has the Goodwin Procter group signed
19 their confidentiality agreements, no shop, no trade agreements?
20 (Various Lists of Scenarios and Evaluations Prepared by
21 Rothschild were hereby received as Debtors' Exhibits 64 through
22 68 for identification, as of this date.)

23 MR. BUTLER: No, they have not.

24 THE COURT: So this was just reviewed by the lawyers?

25 MR. BUTLER: The production in this matter was

1 covered by a protective order. Because the discovery matters
2 were covered by a protective order and they reviewed, I
3 believe, professionals only by the Goodwin Procter firm. And
4 no, the other MDA was not executed.

5 THE COURT: Okay.

6 MR. ISENMAN: That's correct, Your Honor. There's
7 material that -- loose material the debtors have designated as
8 highly confidential and materials that were so designated were
9 attorney's eyes only.

10 THE COURT: Okay.

11 MR. BUTLER: The next group of documents, Your Honor,
12 are news releases and SEC filings, documents 69 through 89. I
13 believe there's no pending objection to these matters as well.

14 MR. ISENMAN: Again, the agreement was it doesn't
15 come in for the truth of matter asserted, it simply comes in
16 for what it is.

17 THE COURT: Okay.

18 (News Releases and SEC Filings were hereby received as Debtors'
19 Exhibits 69 through 89 for identification, as of this date.)

20 MR. BUTLER: In terms of other documents, Your Honor,
21 there were miscellaneous other documents, Exhibits 90 through
22 97 and 101. I believe there's no pending objection. Just for
23 the record, Exhibits 98 through 100 were withdrawn.

24 THE COURT: Okay.

25 MR. ISENMAN: And, again, Your Honor, I believe with

1 respect to 90 and 91 there was a hearsay objection which
2 resolved on the basis that didn't come in -- for the truth of
3 the matter asserted.

4 THE COURT: All right. So those two are admitted.
5 (Miscellaneous Documents were hereby received as Debtors'
6 Exhibits 90 through 91 for identification, as of this date.)

7 MR. ISENMAN: Both 96 and 97, the same thing is true.
8 (Miscellaneous Documents were hereby received as Debtors'
9 Exhibits 96 through 97 for identification, as of this date.)

10 THE COURT: Okay.

11 MR. BUTLER: The next group of exhibits, Your Honor,
12 are documents 102 through 109. These are demonstratives by the
13 debtors. And I believe there's no objection pending on
14 Exhibits 102 and 105 -- through 105. And there may be
15 outstanding objections on 106 through 109.

16 MR. BRILLIANT: I guess I'll address 109, Your Honor.

17 MR. BUTLER: Before you do that, do I have it right
18 102 through 105 come in.

19 MR. BRILLIANT: That's right.

20 THE COURT: Okay.

21 MR. BUTLER: And there are pending objections on 106
22 through 109, is that right?

23 MR. BRILLIANT: 102 through 105, it's just the
24 standard -- because it comes from the board material, again, if
25 it doesn't come in for the truth of the matter asserted but as

1 a demonstrative, we don't object. 109 as I recall is ERISA
2 transactions that did not close during a particular time
3 period, with no description of why they didn't close.
4 Demonstrative evidence demonstrates something that was brought
5 for the testimony, it doesn't qualify as demonstrative
6 evidence. One of the bedrock requirements in order to show the
7 fact finder demonstrative evidence, fairness and accuracy.
8 There's no basis for asserting that. It wasn't like when we
9 had Mr. Resnick on the stand and we were able to talk to him
10 about a draft that he put together to understand it.

11 THE COURT: I'm sorry. So he didn't testify as to
12 this exhibit in his deposition?

13 MR. BRILLIANT: That's correct.

14 THE COURT: Okay.

15 MR. BRILLIANT: This was generated after the
16 deposition. And it is a -- basically a bar graph that just
17 shows by value the number of deals -- I don't have it in front
18 of me, I'm sure Mr. Butler can show it to you. But, I mean, I
19 think the critical thing I remember here is demonstrative
20 evidence has to aid the fact finder by demonstrating something
21 in the testimony or demonstrating something in the evidence.
22 And obviously there's no -- you know, it's not like some chart
23 where you're summarizing lots of disparate things and trying to
24 make it an are to reopen.

25 THE COURT: Well, is there testimony as to this?

1 MR. BRILLIANT: No.

2 THE COURT: Well, then I don't think it could come
3 in. I mean -- I'm not going to admit it.

4 MR. BUTLER: As to 106 through 108?

5 MR. ISENMAN: Your Honor, 106 through 108 suffer from
6 the same problem in that they are charts that there's no
7 testimony about. My understanding is that they were generated
8 by Rothschild --

9 THE COURT: What volume do they appear in?

10 MR. BUTLER: I'll put them up, Your Honor. I'll
11 start with 108, Your Honor, which I think you've seen before in
12 this courtroom.

13 THE COURT: If we had an hour of cross examination on
14 this exhibit and now you're objecting to it?

15 MR. BRILLIANT: Your Honor, it's just arguments, my
16 apologies. The other ones, however --

17 MR. BUTLER: There was also testimony about the
18 trading, this formulation is the same thing, the trading of
19 these numbers and whatever go in there. During the course of
20 your cross examination you spent a half hour on trading -- you
21 were talking about intrinsic value --

22 THE COURT: But the issue is -- at least, Mr. Resnick
23 was able to testify as to this document that's being held up by
24 your associate. The other one, I don't know where it comes
25 from, how it was prepared, etcetera. As you could also tell

1 from my questioning and reaction, short-term trading history to
2 my mind is a minor data point at best.

3 MR. BUTLER: Your Honor, we'll stick with 109.

4 THE COURT: Okay. Then you have the sources and
5 uses.

6 MR. BUTLER: Yes. These are sources and uses that I
7 gather they're objecting to as well. Are you still objecting
8 to sources and uses?

9 MR. ISENMAN: Well, actually, if counsel would just
10 tell us --

11 THE COURT: What is the source of the sources and
12 uses?

13 MR. BUTLER: These were slides prepared by Rothschild
14 using a pro forma sources and uses of emergence. And the -- I
15 think this was produced -- this previously was produced under
16 the scheduling order on Monday, November 26th.

17 MR. ISENMAN: Which, Your Honor, was after the date
18 Mr. Resnick was --

19 MR. BUTLER: Right. He was asked to be deposed on
20 Sunday, he was deposed on Sunday.

21 MR. ISENMAN: And, Your Honor, I'm not sure Mr.
22 Butler has stated whether or not we were provided the
23 underlying source stat that went into this chart.

24 THE COURT: well, Mr. Butler, you're going to engage
25 in oral argument, right?

1 MR. BUTLER: I am.

2 THE COURT: I imagine as the lead counsel for the
3 debtor that you're quite familiar with these numbers --

4 MR. BUTLER: I am, Your Honor.

5 THE COURT: -- and planning for confirmation?

6 MR. BUTLER: Yes, Your Honor.

7 THE COURT: So you can walk me through them at oral
8 argument.

9 MR. BUTLER: Okay. Now, moving on to the next
10 exhibits. There were some court documents scheduling
11 procedures of the orders at 110 through 113 and there was no
12 objection as to those. There were a series of other documents,
13 114 -- against court documents, 114 through 127. I believe the
14 only objection there is an objection by the equity committee,
15 which I don't think is pursuing their objection, which had to
16 do with -- if I'm write, there are no other objections from the
17 equity committee, I think that's right. So I think those come
18 in, Your Honor, uncontested.

19 THE COURT: All right. They're admitted.
20 (Court Scheduling Procedures were hereby received as Debtors'
21 Exhibits 110 through 113 for identification, as of this date.)
22 (Documents Against Court Documents were hereby received as
23 Debtors' Exhibits 114 through 127 for identification, as of
24 this date.)

25 MR. BUTLER: Exhibits 128 and 129 were reversed, so

1 there's nothing there for that. Then the following documents
2 were identified by the objectors, starting with -- these are
3 Exhibits 130 through 201. And these are a series,
4 predominately, of e-mails and other documents. The -- and our
5 objection, we've objected to about half of these documents,
6 Your Honor, based on FRE 408, and the fact that this is --
7 these contain confidential settlement discussions concerning
8 the plan or EPCA terms that were covered by the privilege.
9 They were certainly not intended by the parties to be
10 introduced by a court hearing. I gather that the bondholders
11 view is that 408 is inapplicable here and --

12 THE COURT: Well, what are they being offered for?
13 Just to show the process of deliberation.

14 MR. ISENMAN: Your Honor, that's correct. They're
15 not being offered --

16 THE COURT: To show the validity of the underlying
17 proposals or settlement or the like.

18 MR. ISENMAN: That's accurate, Your Honor.

19 THE COURT: Mr. Fox's point about the other documents
20 that he object to earlier on that. To make it clear that the
21 same point applied.

22 MR. FOX: That's right. The same argument.

23 THE COURT: I think on that basis they could come in.
24 (E-Mails and Other Documents were hereby received as Debtors'
25 Exhibits 130 through 201 for identification, as of this date.)

1 MR. BUTLER: I understand, Your Honor. And then
2 finally, Your Honor, 203 through 211 are additional documents
3 designated by the debtors, and which no objections have been
4 lodged.

5 THE COURT: All right.
6 (Additional Documents Designated by Debtors were hereby
7 received as Debtors' Exhibits 203 through 211 for
8 identification, as of this date.)

9 MR. BUTLER: And that will complete all of the
10 documents.

11 THE COURT: So those are admitted.

12 MR. ISENMAN: Your Honor, there was one other
13 document that we served upon -- it was a demonstrative that we
14 served upon the debtors last night. And I spoke with Mr. Hogan
15 briefly and he was going to get back to me.

16 MR. BUTLER: I should have designated that was a
17 demonstrative, 211 is the exhibit you're referring to.

18 MR. ISENMAN: This one?

19 MR. BUTLER: Correct.

20 THE COURT: So is there an issue with its
21 admissibility?

22 MR. BUTLER: No. It's being admitted for
23 demonstrative purposes only.

24 THE COURT: Okay.

25 MR. ISENMAN: Thank you.

1 THE COURT: Okay. Why don't I hear oral argument
2 then, briefly.

3 MR. ISENMAN: Your Honor, can we have a five-minute
4 bring, or it could be a one-minute break, I need to use the
5 men's room.

6 THE COURT: I'll give you five.

7 MR. ISENMAN: Thank you, Your Honor.

8 (Recess from 5:35 p.m. to 5:49 p.m.)

9 THE COURT: Please be seated. Okay. We're back on
10 the record in Delphi and the factual record of the hearing on
11 the debtors' motion for approval of their entry into the
12 amended EPCA, the December 3rd EPCA amendment. And I'll hear
13 from Mr. Butler first.

14 MR. BUTLER: Thank you, Your Honor.

15 Your Honor, we'll make our closing argument and
16 reserve some time to respond, if we may, at the end to the
17 objectors presentations.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, during the month of
20 September I made a number of statements to the Court. Some of
21 which have been repeated in the objectors' papers in this
22 hearing and others which have been repeated in the disclosure
23 statement objections. When I indicated to Your Honor that the
24 company, in light of the turbulent capital markets, was seeking
25 to make, what I called then and still believe, were going to be

1 laser purchased amendments to its overall transaction in order
2 to be able to develop a market clearing transaction was the
3 phrase I think I used time and again. A market clearing
4 transaction that we would be able to use to emerge from
5 Chapter 11 at a time when the company believed and testimony --
6 there's undisputed testimony -- un rebutted testimony in this
7 record that indicates that the debtors believe that they have
8 achieved all that they can in Chapter 11 and that they need to
9 emerge to maintain and maximize shareholder value or
10 stakeholder value and they need to be able to do that now as
11 opposed to later and that there is a view of the debtors which
12 has not been controverted by any party, that the risk to
13 stakeholder value of remaining in Chapter 11 is, in the
14 debtors' judgment, an unacceptable risk.

15 The -- since that time the debtors have been engaged
16 in a series of discussions that have been described, I think
17 adequately in the direct testimony and adequately in all of the
18 exhibits and including all of the e-mail -- including many of
19 the e-mails identified by the objectors. And I hope that Your
20 Honor will be able to take the opportunity to look at some of
21 the communications that are -- that have been identified as the
22 objectors' exhibits involving the board and management and
23 third parties.

24 I believe, and I think the record demonstrates that
25 the corporate governance in this case has been world class.

1 That in fact the board of directors of this company and
2 management have exercised at all times their responsibilities
3 to maximize stakeholder value and to take those steps
4 necessary. I think I have described this often to people as an
5 obligation to bake and serve. You have to bake a pie and you
6 have to serve it. And if you're sitting as the debtor in
7 possession, your job is to bake the best and biggest pie you
8 can and you keep it in the oven. And if you get it out on time
9 you try to serve it in a way that everybody will get -- will be
10 satisfied understanding that all you have is one pie, not one
11 and a half pies or five pies.

12 And it is inevitable, when you create a really good
13 pie that smells really great, that everybody wants as much of
14 it as they can possibly eat. And that has been what these last
15 three months has been all about. And it has been -- it has
16 been made more difficult by the fact that the pie, in some
17 people's view, isn't smelling as great right now as it was
18 smelling back in August and early September. And the reason
19 for that, of course, is the turbulent capital markets.

20 It is the company's view, I believe, the
21 creditors' committee, in their papers, have conceded and
22 they're now not objecting but their papers go to the point that
23 the intrinsic value in this Chapter 11 case has not
24 fundamentally changed. Mr. Dagel's letters to the board, which
25 are in evidence now, make very clear that Mr. Dagel, who chairs

1 the creditors' committee and who is associated with one of the
2 largest funds in this country, believes that the debtors have
3 done all that they could do to create value in these cases.
4 His letter is very clear in the fact that the creditors'
5 committee takes no issue, and that he takes no issue, with the
6 creation of value, the baking of the pie by the debtors.

7 What we have been trying to achieve, in a capital
8 market situation, where we could not raise 7.1 billion dollars
9 in funded debt was to sort out how to eliminate a couple of
10 billion dollars in cash and all of the intricate trades that
11 had been made, in what the testimony here is very clear.
12 You've heard Mr. Miller, you've heard Mr. Sheehan, you've heard
13 Mr. Resnick testify, you heard Mr. Tepper testify that from day
14 one this has been a compromise case. This has been a case
15 that's built on a settlement. The value here is created, not
16 because this is an absolute priority case. Not because we are
17 simply able to have a lot of value we can distribute to people
18 but because we have been able to enter into a series of
19 settlements.

20 A number with labor that took us a year and a half
21 that were difficult and protracted and that represented the
22 sacrifices of a lot of people in order to be able to create the
23 opportunity to enter into a meaningful settlement with
24 General Motors. There is, you know, General Motors has been
25 portrayed in this case in lots of different ways. And it is

1 by, no question, it is the 400 pound, the 6,000 pound, whatever
2 weight you want to give it, it is the big gorilla here. It is
3 former parent. It is the largest customer. And it has a
4 series of very complex commercial relationships that bring
5 value to people if managed properly. And if not managed
6 properly can, candidly, take value away. And this entire
7 negotiation with General Motors for the last several years has
8 been a negotiation on how to, if you will, rationalize the
9 legacy relationships and the future relationships in a way that
10 would be productive for General Motors and productive for
11 Delphi and the balance of its stakeholders.

12 But make no mistake, without the ten billion dollars
13 plus that comes from the plan investors and from General
14 Motors, there is no pie here to serve. And the rest of this is
15 irrelevant. And ultimately, while people can, and there was
16 much cross examination to Mr. Sheehan and Mr. Miller. Do you
17 mean to tell me, Mr. Miller, you know, the -- you had do what
18 the -- GM and the plan investors said you had to do. You had
19 to have their support? Mr. Sheehan, you have to have their
20 support, the questions went. And the answer is yes. Because
21 the reality is, there is something called a GM settlement
22 agreement, a global settlement agreement, a master structure
23 agreement that are admitted into evidence. And the investment
24 agreement that was admitted -- that was approved on August 2nd
25 has been admitted into evidence. Both of which require that

1 the company's plan of reorganization and disclosure statement
2 and other constituent documents be acceptable to the people who
3 are putting ten billion dollars plus into the company.

4 THE COURT: Well, we did not admit into evidence your
5 demonstrative pro forma sources and uses at emergence. But on
6 this point, as to the necessity of the plan investor cash, I'd
7 like you to discuss a little more about that under the 12/3/07
8 amended plan of reorganization which reflects the EPCA
9 amendment that is before me today.

10 And again, the question is can that -- can the
11 company emerge under such a plan without the cash of --
12 provided for under the amended EPCA.

13 MR. BUTLER: Your Honor the -- Exhibit 106 had two
14 pages to it, 106(a) and 106(b).

15 THE COURT: Right.

16 MR. BUTLER: 106(a) was the pro forma sources and
17 uses at emergence back on the September 6th plan. It was the
18 one that imagined it.

19 THE COURT: That had the extra financing in it.

20 MR. BUTLER: That we would be able to raise 7.1
21 billion in cash, which meant that we had, overall, 10.3 billion
22 dollars worth of cash and that we would -- you know, those
23 would be our cash sources and we would also be able to raise
24 those non-cash areas of value by restating that secured --
25 other transactions so that we would have sources of over eleven

1 billion dollars which we would be able to use. For, among
2 other things, take care of pension.

3 THE COURT: Okay.

4 MR. BUTLER: And I'm not going to spend a lot of time
5 at this hearing talking about the five tenets of our
6 transformation plan. But from the beginning this company has
7 sought to be able to construct a solution for pensions that
8 would allow our hourly and salaried pension programs to be
9 frozen but retained and benefits paid as opposed to turning
10 them over to the government. That costs a lot of money.

11 THE COURT: No, I understand. You -- I mean, I think
12 you could turn to -- to the second page of it because --

13 MR. BUTLER: All right. The second page of it, and
14 by the way I think it's important to note that the pro forma
15 sources and uses at emergence are essentially the same under
16 each of the amendments. And one thing I wanted to say in my
17 argument here, Your Honor, and I'm going to divert -- I want to
18 talk to divesture for one moment and talk about two principle
19 points I think are important.

20 One is, there have only been two EPCAs in this case.
21 One was the EPCA which served on Appaloosa which was terminated
22 by the debtors. Not as was suggested in some questioning, on
23 its own terms but the debtors, when they had the opportunity to
24 exercise a unilateral right of termination and thought it was
25 in the interest of the estate to do so in July of this year,

1 terminated that EPCA. And they entered into the EPCA with --
2 or the investment agreement with Appaloosa in mid-July.

3 THE COURT: That got both committees' support.

4 MR. BUTLER: That got both committees' support and
5 that everybody -- and led to the September 6th filing of the
6 plan.

7 A plan of reorganization that -- so there is, you
8 know, fairness in the world here, you only have to look at the
9 plan and disclosure statement that was filed on September 6th
10 and read the disclosure that the plan -- or read the press
11 release, which is in evidence as well. The press release was
12 issued to indicate that the company -- that the plan investors,
13 excuse me, had reserved their rights, under the investment
14 agreement, on the labor agreements, General Motors agreement,
15 the business plan, the disclosure letters, the disclosure
16 statements, the plan they reserved those rights when we filed
17 them.

18 The committees, the company, we were all on notice.
19 We all understood that when we filed that, that we were going
20 to have that kind of situation to deal with because when we
21 signed the EPCA, the investment agreement, on July 18th -- mid
22 July, it was July 18th I think, it was a couple of days before
23 the leverage markets closed in this country for pretty much the
24 balance of the summer. July 20th is the night most of us
25 remember. We came back to work and the world was different.

1 And ultimately that's -- we've been dealing with
2 those issues all the way through.

3 THE COURT: Well, that cuts both ways. But I
4 understand your point.

5 MR. BUTLER: Also, I just think the record needs to
6 be clear, there's only been two EPCAs. What we're talking
7 about here in this pro forma are amendments to the EPCA that
8 have been proposed, not a new EPCA. And that's really
9 important because it's something that people fail to ignore --
10 excuse me, fail to pay attention to, which is Exhibits 131 and
11 132 in this case, which are the co-investor agreements and the
12 additional investor agreements.

13 I urge Your Honor to look at those agreements and the
14 provisions in them because while the objectors would have you
15 point to the lockup provisions in those agreements, the other
16 pieces of those agreements are that unless -- for the most
17 part, unless the EPCA is terminated the additional investors
18 can't walk away from their syndicated piece.

19 So what happened is when we, the company, exercise
20 our business judgment and unilaterally terminated the EPCA in
21 mid-July -- in early July -- the Appaloosa service EPCA, all of
22 the syndication in connection with that blew up. It all
23 disappeared. Everybody was released. And when we did the next
24 EPCA in mid-July, Appaloosa had to go back and bring all of
25 that back together in the co-investor agreements and additional

1 investor agreements that were publicly filed by them as they
2 were -- the form of those agreements publicly filed with the
3 SEC as they went forward.

4 And the point is, that when you -- you heard
5 testimony from Mr. Miller about the board's concern that
6 terminating this EPCA, even if we could do it which we don't
7 have the right to do now under the EPCA. But even if we did,
8 it would release that entire syndicate. At the moment that
9 syndicate is tied in to the existing EPCA, all right. And
10 we've had the ability to negotiate with Appaloosa on many of
11 the points and with the other five co-investors on some of the
12 points. And the decisions they make bind the rest of the
13 syndicate.

14 It's not a point to be overlooked, Your Honor,
15 because in terms of actually making an investment in this
16 company, maintaining the syndicate, all right, it's been a
17 point that's been extremely important to Mr. Tepper, it's been
18 extremely important to Mr. Miller and Mr. Sheehan. And so when
19 you look at this, it's not multiple EPCAs it is the investment
20 agreement since mid-July. And when you look at the pro-forma
21 sources and uses, when we realized you could not get 7.1
22 billion, and we went through a process. We've identified, Your
23 Honor and we had the exit financing hearing, and we've been
24 through this, we found out we could only get 5.2 billion. And
25 oh, by the way, we really needed to have General Motors pick up

1 part of that piece and agree to fund it.

2 But all of a sudden the sources of cash dropped from
3 11.1 -- a little over eleven billion down to 9.1 billion. That
4 necessarily meant that the uses had to be re-jiggered. What
5 happened? Couldn't change our pensions, still needed 1.2
6 billion there. In order to be able to complete the General
7 Motors transaction, remember they have in the settlement a
8 414(1) transaction where they take part of our pension assets
9 and liabilities over to their pension and we, in fact, give
10 them a note and we've agreed to pay that note off. That
11 1.5 billion dollar has to be paid. That's a very important
12 transaction to us, a very important transaction to
13 General Motors and an integral part of the GM settlement. So
14 that doesn't change. Paying off the revolver and the DIP term
15 loans, that doesn't change. Still have to pay off your DIP no
16 matter what.

17 So what -- what changed? Well, we went to the
18 unsecured creditors. We said that 697 million dollars that was
19 going to go to the unsecured creditors and the trade creditors,
20 we don't have money for that any more. The twenty percent, or
21 so, of cash that had to -- had to change from September 6th to
22 these other transactions.

23 The other thing that had to happen is that when you
24 looked at some of the other payments we've been trying to go
25 through and work through those, obviously, but the other big

1 thing is we went to GM and said, you know, for all the things
2 you've done for us we promise to pay 2.7 billion in cash, which
3 you've told us constantly is a substantial discount of what we
4 really owe you, guess what, we can't. And General Motors, in
5 my view, as one of the principle negotiators, General Motors
6 has acted as responsibly as anyone could in looking at what has
7 occurred. Now, they're not simply -- no one in this courtroom
8 is in the business of gifting things to the debtor. But the
9 fact of the matter is, they have materially changed their
10 transaction. And they have agreed to support this
11 reorganization in a -- in what we believe and we will
12 demonstrate in another hearing, is a settlement case. They
13 have agreed to essentially fund this case even more by reducing
14 the 2.7 billion to what is now a payment of 750 million
15 dollars. So that a tremendous amount of the cash that went out
16 in sources and uses was directly General Motors saying that
17 we'll take less now and take other forms of currency.

18 Of course, as they took other forms of currency and
19 as the transaction began to change, and you can see that the
20 non-cash uses increased because they're taking a second lien
21 note of 750 million and so all of a sudden you have 1.5 billion
22 of non-cash uses as opposed to 825 million. But if you took
23 away here 2.55 billion dollars of -- of plan investor money,
24 take it away, cash is not available, I don't know, maybe
25 someone else in this courtroom has a great idea. But I will

1 just point out nobody's come to the debtor with a better idea.

2 THE COURT: In other words, after those cash uses you
3 don't have anything remotely close to 2.5 billion of access
4 cash.

5 MR. BUTLER: Absolutely not. What we have in terms
6 of access cash is the cash that would normally -- the plan
7 investors and we would normally expect would be in the company
8 which I believe is well under a billion dollars on a normalized
9 basis.

10 So when you look at this, Your Honor, the fact of the
11 matter is my view of the world, as the company's lead
12 restructuring counsel, which back on September 6th the plan
13 investors or a plan investor was optional in my view. That is
14 it was optional in the sense that we probably could have sorted
15 out, you know, how to solve the problem and internally fund the
16 plan. That would require General Motors making some of the
17 concessions they ultimately made. But once --

18 THE COURT: Assuming the capital markets were what
19 they were like back then.

20 MR. BUTLER: Exactly. And what they were like all
21 spring and early summer. That's what the assumption was. But
22 once -- once the capital markets went south in August and
23 people all thought that maybe folks would go out to the
24 Hamptons and come back in a better mood on Labor Day and it
25 didn't happen. And it's been getting, you know -- and there

1 was a little window in the -- things got a little better in the
2 middle of the fall and now it's gotten worse again.

3 The fact of the matter is that when you look at it,
4 what maybe optional, maybe there was an opportunity for a self-
5 funded plan here. There's no any testimony here, none put in
6 by the objectors, that suggests there's any possibility of
7 doing a self-funded plan here. And not a single self-funded
8 plan proposal has been presented to the debtors. In fact, the
9 testimony was no other proposal has been presented.

10 And oh, by the way, the Highland led group which is
11 represented in court today and who filed an objection which is
12 now being prosecuted for today, that group -- they're not
13 hindered by the lockups. They told -- the testimony was that
14 they told -- Mr. Miller testified they were going to present
15 him with a proposal, they didn't. Maybe they will. But not as
16 we sit here today.

17 THE COURT: Well, now, you said earlier and I believe
18 one of your witnesses said that the debtors were precluded from
19 terminating the agreement. That's not entirely true. You can
20 terminate there's just a cost to doing it.

21 MR. BUTLER: Well, we could breach the agreement,
22 Your Honor. I mean the fact of the matter is -- and that's why
23 the (indiscernible, coughing) from our perspective and we'll
24 talk about corporate governance in just a few minutes, the
25 bookends that the board of directors had in mind, what

1 Mr. Miller has testified to, I believe, in his declaration
2 directly, the bookends we talked about was, you know -- you --
3 if there's a termination event here, if this thing blows up,
4 and, you know, and we go to war with Appaloosa, somebody is
5 going to probably pay a hundred million dollars. Either we're
6 going to be able to convince you, who is probably going to have
7 to make that decision, that they -- that they intentionally
8 breached, in which case their damages are limited at a hundred
9 million dollars. Or they will be able to convince you that we
10 breached and it's not an alternative transaction capped at
11 eighty some odd million it's a breach under the agreements and
12 it's actionable at a hundred million.

13 So the bookends are, if we get into a war with these
14 plan investors that somebody is going to pay, probably, a
15 hundred million dollars. We'll figure out over the next couple
16 of years who that is, and in the meantime we will not have any
17 plan investors to negotiate with and the syndicate -- the
18 syndicate established in Exhibits 131 and 132 are released.
19 And they're released in what the company has testified to,
20 Mr. Sheehan testified and Mr. Miller testified to and
21 Mr. Resnick testified, particularly as the company's investment
22 banker, are the most turbulent markets in memory. And
23 Mr. Tepper testified about the volatility of the market and the
24 impact on price. That -- those are the factors people consider
25 -- the debtors considered in thinking about the business

1 judgment to be exercised here.

2 THE COURT: While -- while we're going through the
3 cash sources and uses, what is the -- leave aside GM for the
4 moment. What is the current estimated amount of senior debt
5 claims? Now, I'm not talking about the senior notes, I'm
6 talking about all debt that would be senior under the toppers'
7 agreement.

8 MR. BUTLER: You're asking about the trade claims and
9 the -- and the bondholder claims?

10 THE COURT: Yeah.

11 MR. BUTLER: That number, Your Honor, there's
12 about -- I'm going to look back and make sure -- I'm sure
13 between Mr. Sheehan and Mr. Dagel who are both sitting next to
14 each other, they both jumped up. It's about three and a half
15 billion, right? So about three and a half billion.

16 THE COURT: Okay.

17 MR. BUTLER: Your Honor, the next point that I'd like
18 to make here, and these were admitted into evidence, and
19 there's two ways of looking at this. You can look at it
20 through Exhibit 104 which has four pieces to it, A, B, C and D.
21 Or Your Honor can look at it --

22 THE COURT: I'm sorry, is that principle or is that
23 principle and interest?

24 MR. BUTLER: That would be accrued interest as well.

25 THE COURT: And interest.

1 MR. BUTLER: About two billion dollars worth of
2 bonds, I think, without the interest and then accrued on top of
3 that and there's 1. -- there's a cap of 1.45 billion dollars of
4 other claims which excludes post-petition interest under the
5 plan.

6 Your Honor, this next part -- there's -- if Your
7 Honor can follow this either in Exhibit 104, which were
8 admitted into evidence, or Exhibit 126, also admitted, Exhibit
9 E to that is a chart we -- the company put together that shows
10 the differences between the September 6 plan, the 11/14 plan
11 and the December 3rd plan. And what I really wanted to focus
12 on here, it's the same arrangement, and this is the -- when
13 Mr. Tepper testified about the illustrative scenarios flying
14 back and forth it was basically this format with lots of
15 different formulations plugged into it that was used as the
16 basis for negotiations between the statutory committees,
17 General Motors, the plan investors and the company. And this
18 was the economic analysis, 104(a) was the economic analysis
19 that related to the September 6th plan. This was the one --
20 this, sort of, takes the pro forma sources and uses I've talked
21 to you about, expresses it in a different way because what it
22 basically does is show the recoveries down here. It shows what
23 happens to the rights offering and the plan investor buy-ins up
24 top. It shows the amount of debt there would be, the 7. --
25 excuse me the equity before it goes down after the issuance,

1 the net equity of 5.8 billion. It shows the net debt that
2 would be here, the pension payments and so forth. And then it
3 shows in the lower part of it the recoveries assuming
4 conversion of the warrants. And here you see the September 6th
5 economic analysis 104(a) supports the pro forma sources and
6 uses that would have matched that also at 106(a). And you can
7 see that GM got 2.7 billion, the unsecured got twenty percent
8 cash, more or less. And the rest was an equity grant, no
9 participation of the rights offering. The trust preferred also
10 got par plus accrued and equity received a series of grants,
11 including the rights offering, the discount rights offering
12 which belonged to them at the time for 470 million dollars.
13 And that was the EPCA. This capitalization up in this upper
14 left-hand corner and this plan, was the plan of the August 2nd
15 EPCA embraced. It is the plan that was referred to in the EPCA
16 when we, you know, that was ultimately in the Exhibit B which
17 were the plan terms then because then the plan terms didn't
18 actually have a document. And ultimately it was what was
19 agreed to, subject to the reservation of rights purported in
20 the plan and disclosure statement at the time this was filed on
21 September 6th.

22 If you look at 104(b) on October 29th, what happened
23 between September 6th and October 29th in negotiating, and
24 Your Honor has a full process description in all of these
25 exhibits, was that the October 29th transaction was again a

1 transaction dealing with what would the plan investors and
2 General Motors agree to do to the company. What would they
3 tolerate given the changes in the capital markets? And in this
4 case, what would the creditors' committee agree to? The
5 creditors committee had agreed to this formulation. The equity
6 committee went to war. People talk about October 29th as
7 having been the solution. It was a solution for half of the
8 capital structure. It was a declaration of war for the rest of
9 the capital structure. It was, in fact, the creditors, a
10 judgment they're entitled to make, saying given the changes in
11 the ships, given the loss of the two billion dollars, given our
12 loss of value, we are no longer comfortable of having a
13 recovery on a par plus accrued basis at the TEV we negotiated.
14 Because I should have mentioned maybe back in 2006, it was in
15 the testimony and in the evidence. Going all the way back to
16 2006, the way that the -- the framework for all these plans,
17 decided before Appaloosa was even at the table, before there
18 was a plan investor, there was General Motors and the
19 committees and the company that were at the table and there was
20 a decision made in the summer of 2006 where the plan
21 investors -- excuse me, strike that.

22 The creditors committee and the General Motors came
23 out of a conference room at our office, you know, arm in arm
24 saying we're going to have par plus accrued. It's going to be
25 based on forty-five dollars a share, enterprise value. And

1 that's what we're going to do. We're going to build this case
2 around that. And then we found plan investors to support that.
3 And that's been the framework of this because that was the
4 settlement. That was the handshake. And the moment they
5 walked out of the conference room, and I'm not going to
6 embarrass Mr. Dagel who's sitting here now maybe because he
7 wasn't so happy with me at the time, we basically at that point
8 said to him if that's -- if -- you know, if -- you think you're
9 paid par plus accrued what are the other people getting in the
10 deal. And that's what led to the September 6th transaction and
11 the EPCA.

12 On October 29th when the world changed, what we
13 announced what, and the objectors have entered into evidence
14 designated, for example, Mr. Miller's letter to
15 Mr. Yaku, the chairman of the equity committee whose committee
16 went ballistic when basically this was announced, and they were
17 getting -- instead of getting 470 million dollars in value
18 attributable to them they were getting sixty-nine. And that
19 was in the declaration born October 29th. People sometimes
20 think that this was a -- you know, everyone was happy with this
21 EPCA. The fact of the matter is that people were not. This
22 was the one that ultimately Goldman didn't sign up to, in terms
23 of the amendment. But the fact of the matter is, they were the
24 only people that were very unhappy with it.

25 But this transaction, when we had the two billion

1 less in cash, all of a sudden General Motors is taking now --
2 trying to take a billion and a half in cash and 1.1 in equity,
3 sort of 2.6 billion. They had already reduced what they're
4 going to take in total under the plan. Unsecured have now
5 taken the rights offering from equity and they're doing their
6 transaction now where they're getting rights offering -- a
7 small amount rights offering and a lot of equity. Trust
8 preferred are now getting part and equity is, sort of, getting
9 nothing. This deal -- this deal terminated. This deal Goldman
10 never signed up. This transaction never came to be.

11 When this transaction never came to be, the fact is
12 and the record indicates and the evidence indicates that people
13 got together again and tried to negotiate. But when the
14 company believed, and there was at the point of this, and there
15 was -- and Mr. Miller testified in his declaration and was
16 questioned about the business judgment that was used.

17 And let me just take a moment and talk about the
18 business judgment before I got and talk about what happened in
19 these amendments. This has been admitted into evidence. Its
20 Exhibit 103(a), (b) and (c). And this is taken from a
21 statutory committee book. It first was in a board room where
22 Mr. Miller and Mr. Sheehan and others went through a decision
23 tree thinking about how -- what they should do in light of the
24 October 29th EPCA amendment having not been able to be
25 realized. And they looked at six basic factors. And this is

1 now in the evidentiary record. They looked at DIP financing,
2 they looked at exit financing because the company's DIP
3 financing was expiring in December of this year they needed to
4 get exit financing. They looked at the EPCA and they also
5 looked in 106(b). They looked at -- excuse me 103(b), I'm
6 using the wrong number -- 103(b). They re-examined the GM
7 settlements, the transformation plan had been offered since
8 March 31st of 2006 and an overall plan of reorganization.

9 And they looked at judgments, as boards are supposed
10 to do. And on each of these things they said, well we need DIP
11 financing to proceed. There are risks associated with it.
12 There are risks associated if we defer. And ultimately the
13 board decided to proceed.

14 They looked at exit financing and said, gee, if we're
15 going to have exit financing we have to have an EPCA deal and a
16 plan or should we delay emergence? They examined those
17 factors. They looked at the risks. They decided to proceed.

18 The EPCA, the equity investment, same thing. They
19 said hey, if we amend it and try to keep moving forward even
20 though the October 29th deal didn't go on, there is certainty
21 of execution that is required. There's going to be a
22 renegotiation delay. We've got this -- there's potential for
23 alternative transaction fees. If we somehow figure out how to
24 terminate it, mutuality is required and there's all kinds of
25 other reactions. The company evaluated them and decided to

1 amend.

2 GM settlements, the board said should we go back to
3 GM, rip up our settlement agreement and start over or should we
4 try to maintain the GM settlements in some way. And they voted
5 to maintain thinking about these factors. This is coming right
6 out of the board books, right out of the statutory committee
7 books. Because as has been the case in this Chapter 11, the
8 board thinks about these issues and then the board and
9 management share these issues with our statutory committees.
10 And so this entire decision tree was shared with both the
11 equity committee and the creditors committee.

12 They looked at the transformation plan. They said
13 should we take a step back and change it. And the view was,
14 and Mr. Dagel confirmed it in his letter to the board of
15 directors, creditors believe the transformation is essentially
16 working and is supported. And so they decided to maintain it.

17 And then finally, from a plan of reorganization
18 perspective, they said should we look at -- continue par plus
19 accrued, which is what GM and the creditors have told us for a
20 year we should be doing, you know, or should we move to some
21 sort of a pot plan arrangement. And what would that mean and
22 what would it mean to timing, and they looked at the factors
23 and they decided to maintain par plus accrued. A decision they
24 consulted with the committees on and the committees endorsed
25 and indicated they should do.

1 So when they reached these decisions, right, 103(c)
2 admitted into evidence says is once you made those decisions
3 the board said what should we do. And these were actually the
4 boxes and the numbers and the colors and the charts that the
5 board looked at and went through and thought about. And they
6 said well then we need to amend the EPCA. And if we amend the
7 EPCA, you know, we need to think about the direct investment
8 piece and the rights offering backstop, that's the preferred
9 and the rights offering. And, you know, what should the
10 amounts be and the prices. And who should they be and what
11 should the structure be. And that will go forward in the
12 potential plan amendment to the board who had not been happy,
13 as you saw in the evidence and management not being happy in
14 Mr. Sheehan's memo to the board about how some parties were
15 trying to turn this into an absolute priority case as opposed
16 to a settlement case. The board said to do this we need a
17 reasonable equity settlement. There has to be something here
18 we can do that will bring people together and on board. And
19 that was the decision. That was the decision the board made.
20 And that's what led, ultimately, to the -- what are now the now
21 infamous November 14th amendments.

22 The November 14th amendments, at that time, were
23 amendments that the company had and you saw the e-mail traffic,
24 it's in evidence now. The objectors designated it. Which
25 basically -- when the November 14th amendment was -- the

1 company recognized that the creditors and the equity committee
2 would hate this, people would hate this proposal. But again,
3 the company did what it did all along and what the evidence
4 supports. The company went through and -- and examined who
5 they needed -- the support they needed to move forward, what
6 was executable and confirmable. And they believed that what
7 they needed to do to be able to execute was have plan investor
8 and General Motors support, which this plan had. Which changed
9 the structure here. I'm not, obviously, going to go into it.
10 It -- the plan investors improved their position here. Some of
11 the other party's positions were improved. But ultimately this
12 is what we put out on the November 14th amendment. It was
13 uniformly disliked by our committees. It was not exactly
14 winning any -- while it wasn't directly before the Court it
15 didn't win any merit badges from this Court either. But what
16 it did do was force the parties back together to talk. And
17 when you look at the December 3 amendment, the truth of the
18 matter is -- and you examine it and I know the objectors are
19 going to make a big deal on how the December 3 is so
20 dramatically different then everything else.

21 And I urge Your Honor to look at Exhibit 126 where we
22 go through the differences. And actually what happened here,
23 more or less, is that Mr. Tepper, to demonstrate, in his mind,
24 leadership and to send a message to this Court and others who
25 had criticized him, basically said I will take my rights

1 offering on the A -- my plan investor A, my Pref A. I'll take
2 it back up to where it was. I just want to have issuance of
3 it. Yes, was the coupon increased by a hundred basis points?
4 Yes. Initially was the conversion priced increased until the
5 creditors' committee said not on our watch? Yes. But it went
6 back down to what it had been, all right. And that was their
7 give-up. And General Motors, once again as they have done
8 every time they've been called on to do in this case where they
9 had to make the difference to move the case forward because
10 this is a settlement case. General Motors basically reduced
11 their -- their recovery in the aggregate and they moved around
12 the form of their recovery by giving away their recovery to
13 junior classes to be able to make this to happen. And that's
14 what brought these amendments to pass and brought the support
15 of both the committees.

16 So Your Honor, when you look at this -- the history
17 here, the issue before the Court obviously is, you know, did
18 the board of directors and has the company and, frankly because
19 I've come to be schooled by Your Honor about this Court's view
20 of business judgment, and does this Court in its own
21 independent exercise of -- of judgment as the Second Circuit
22 requires the Court to do, what's the right answer here. And
23 the one thing I like about Your Honor's decision, the one thing
24 that I like about it is it requires the judges in this district
25 to walk in the shoes of the board. And when you walk in the

1 shoes of the board you need to consider the hand and the cards
2 that the board is dealt. As Mr. Miller testified, we get to
3 vote on what's before us not what we would like it to be.

4 These are not aspirational decisions. These are
5 decisions based on how do we maintain in the reality of the
6 circumstances the value for stakeholders against these event
7 risks, against all of the preponderance of the issues in the
8 case. And so, Your Honor, the give-ups -- the grand give ups
9 which always happens in, sort of, the last round. What were
10 the grand give-ups? Equity agreed to give -- to basically take
11 warrant value. The creditors agreed to increase the TEV at
12 which they were comfortable recommending to their stakeholders
13 that a par plus accrued recovery was achievable slightly, based
14 on all of the circumstances and sorting out what they believe
15 was the appropriate recommendation.

16 THE COURT: You mean they increased the value
17 slightly not that it's slightly achievable.

18 MR. BUTLER: Excuse me?

19 THE COURT: You mean they increased the value
20 slightly, not that it's slightly achievable.

21 MR. BUTLER: No, no. Increased -- yes, increased it
22 by about 105, 120 million dollars (indiscernible) something
23 like that. Slightly over thirteen billion. Agreed that
24 purposes of evaluating this they would look at warrant value
25 given to the equity differently than it looked at other things

1 because clearly some of those warrants are struck at very high
2 dollar amounts which, if those are achievable, everybody here
3 will be very happy in terms of the recovery for everybody.

4 And so the creditors -- the creditors made an
5 assessment about that. General Motors gave up direct recovery
6 for other parties. And it was those, basically, three parties.
7 The committee sitting around with General Motors and the plan
8 investors wanted to give back as well. They created but not --
9 these are not dramatic changes. I mean, to the extent people
10 want to say December 3rd was dramatic, I'm not going to come
11 here and say this was a watershed event. It's a watershed
12 event that we have people in agreement. It was not -- except
13 for the -- some of the bondholders. But it was not a watershed
14 event in the sense that everybody gave up around the table in
15 order to make this possible. It's the -- what Mr. Resnick
16 testified is that multi-dimensional, multi-variable equation
17 trying to make sure that you keep everything in place so that
18 you have a pie to serve.

19 It is the company's business judgment, Mr. Miller was
20 impassioned in his -- in his views in this court and I
21 understand why. It is -- he certainly represented the views of
22 the board of directors of this company, at least at the
23 meetings I've been in, when he testified here today. Which is
24 -- one of the things the company is concerned about is that pie
25 in the oven we're trying to serve. If it stays in much longer

1 at 350 degrees, there may not be a pie that looks anything like
2 what people want to eat now. And so ultimately, Your Honor, at
3 the end of the day, from the company's perspective this is a
4 case about business judgment.

5 The company stands before Your Honor understanding
6 that you have to apply your own brand of business judgment as
7 it relates to this. And you have to sort through whether this
8 makes sense under all of the circumstances.

9 I do want to point out two other closing arguments --
10 closing items here and then I'll defer to others. First, the
11 suggestion in the objector's papers that this motion seeks the
12 Court approval of a plan of reorganization, which Your Honor
13 has twice rejected in these cases so far, should be dispensed
14 of simply by reading section 9(a)(VII) of the investment
15 agreement which basically provides that the obligations are
16 subject to the Court's entry of a final confirmation order
17 approving the plan among other conditions. And that our
18 obligation to issue and sell the common stock and preferred
19 stock is subject to that same condition. The reality is that
20 the EPCA conditions are premised on Your Honor's confirmation
21 of a plan not the other way around.

22 I also would ask Your Honor that if Your Honor is
23 prepared to grant the relief here, that Your Honor honor the
24 waiver of the ten day stay that we've requested under Rule
25 6004(g). No party who is currently before you objecting --

1 objected to that in their papers. Only the equity committee
2 did and they are now on side with the company and supportive of
3 moving this case forward as expeditiously as possible.

4 The item that I'll come back and speak of in more
5 detail after Mr. Rosenberg's had a chance to say a few words
6 about it is the issue of the interest rate condition.
7 Obviously it's the sole thing the committee wanted to come and
8 address the Court with separately. And I'll talk more about
9 the business judgment related to that and the record that was
10 made in connection with that after deferring to Mr. Rosenberg's
11 argument.

12 THE COURT: As a practical matter, what does the
13 6004(g) waiver get you? I mean, wouldn't you be proceeding
14 anyway with the disclosure statement hearing? And if I
15 approved the disclosure statement, voting on a plan and --

16 MR. BUTLER: I think what it gives us, Your Honor, is
17 the opportunity to say in the plan and disclosure that we send
18 out that we have an approval -- we have a final order in
19 connection with an approval of our investment agreement. And I
20 think that's important. We need to bring certainty, to the
21 extent we can, in very uncertain times to this case. The
22 company believes that we should be on a, you know --

23 THE COURT: But --

24 MR. BUTLER: It's no different, Your Honor, then when
25 you approved it on August 2nd, in terms of the 6004(g) waiver.

1 THE COURT: Yes and no. There were things that you
2 all needed to do as a mechanical matter at that time, including
3 going out and raising the money, which is already going on.
4 And I understand that aspect of it but, I mean, even if 6004(g)
5 is waived, there could still be an appeal.

6 MR. BUTLER: I -- no, I understand that, Your Honor.

7 THE COURT: So I -- it -- I would understand if it
8 pertained to the ability to raise exit financing or the like
9 but if its just to be able to say --

10 MR. BUTLER: Well, Your Honor --

11 THE COURT: -- something besides that the Court has
12 approved the agreement in an order entered on X date, I'm not
13 quite sure, as a practical matter, what the --

14 MR. BUTLER: Well, Your Honor, we are in the process,
15 as you know, we have two things we have to do. We have to put
16 out our disclosure statement and plan, assuming the disclosure
17 statement is approved in a form acceptable to Your Honor in a
18 subsequent hearing following this. And secondly, we are in the
19 process, based on the authority Your Honor gave us back in --
20 on November 16th of moving forward with the exit financing.
21 And the exit financing packages right now, obviously, you know
22 once again, the calendar is not our friend.

23 We are raising exit financing not only in the
24 turbulent market but at the end of the year. And as a result
25 were in the process of implementing an appropriate strategy to

1 address that with our lead banks in doing that. But they
2 will -- that does involve making presentations at which I think
3 this issue would be very relevant.

4 THE COURT: Okay.

5 MR. BUTLER: Thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. ROSENBERG: May I, Your Honor.

8 THE COURT: Yes.

9 MR. ROSENBERG: Your Honor, I think that it's fair to
10 say that the committee find itself in an extremely difficult
11 position. I agree with some of what Mr. Butler said. I
12 disagree with a number of the details but for better or worse
13 the committee firmly agrees with the bottom line testimony of
14 Mr. Miller and Mr. Sheehan, and as emphasized by Mr. Butler,
15 that this plan however imperfect, however undesirable, however
16 contrary to what the committee's expectations were a mere few
17 months ago, is far better then the alternative of delay,
18 uncertainty and what that might or might not result in at the
19 end of the day, because as has been emphasized over and over
20 again today, no viable committed alternative has been put
21 forward.

22 The other piece of that is that we do feel that we
23 have negotiated this to death, as hard as we possibly could to
24 obtain the best possible deal within the parameters of what
25 we're dealing with. Aspirationally, I wish those weren't the

1 parameters but they are. That brings me to the EPCA, which is
2 the subject of what we're talking about today.

3 The equity purchase commitment agreement.
4 Unfortunately, Your Honor, what we have learned the very hard
5 way over the last eleven months or so is that this EPCA, equity
6 purchase, is neither a commitment nor an agreement. What it is
7 is a one-way option. A one-way option for the Appaloosa -- for
8 Appaloosa and it's co-investors to go forward if it decides it
9 wants to.

10 THE COURT: All right. That's overstating it.

11 MR. ROSENBERG: Perhaps. I suggest -- I suggest to
12 Your Honor that it may not be. You heard -- we put -- we put
13 in the papers -- you heard a lot of testimony today about the
14 state of the markets, how they've gotten worse over the last
15 couple of weeks, not better. And I suggest to you that the
16 risk of not meeting the 585 million dollar number is extremely
17 high.

18 Now, let's not, again, assume that this is free from
19 the perspective of the debtor and the stakeholders. If the
20 Court approves the EPCA amendment today and the Court approves
21 the disclosure statement, I assume tomorrow, unless were
22 staying here until midnight, Your Honor hasn't said.

23 THE COURT: No.

24 MR. ROSENBERG: I'm so grateful to hear that.

25 THE COURT: Is it -- cutting through it, isn't there

1 a cost to --

2 MR. ROSENBERG: That's where I was going, Your Honor.

3 THE COURT: -- the change you're proposing?

4 MR. ROSENBERG: The cost -- the cost of --

5 THE COURT: To get the change you're proposing?

6 MR. ROSENBERG: To get the change I'm proposing?

7 THE COURT: Yeah.

8 MR. ROSENBERG: We won't know unless this Court
9 orders it. What we do know is not getting the change will cost
10 twenty-eight million dollars tomorrow, okay. A delay,
11 potentially, given the debtors position about its legal rights
12 and obligations until March 31, while we're all sitting around
13 notwithstanding that the investment -- the interest commitment
14 cannot be met, 82.5 million dollars as an alternate transaction
15 fee. And as Your Honor heard today at great length, a lockup
16 of investors who might be prepared to do a different
17 transaction not only through March 31, that's the co-investor
18 money.

19 THE COURT: But these are the same investors you say
20 want to preserve as much optionality as possible. I mean, I
21 understand --

22 MR. ROSENBERG: Your Honor, there are two different
23 issues here, okay. There is Appaloosa who brilliantly
24 negotiated this optionality. There are all the other investors
25 who might be willing to do a different deal but, as Mr. Tepper

1 suggested, there are any number of unlocked up parties. And
2 the last time he made that speech he rattled off about twenty
3 such parties as to who they were. So, there are investors, you
4 could do a different transaction. But the price is either 82.5
5 million dollars or waiting until, at least, March 31st.

6 So, therefore --

7 THE COURT: Well, let's explore that a minute.

8 MR. ROSENBERG: Okay.

9 THE COURT: I appreciate that everyone, focusing on
10 what happened over the last couple months, poured over the
11 legal options under the EPCA agreement and what could happen.

12 MR. ROSENBERG: Uh-huh.

13 THE COURT: And obviously the cap on damages is an
14 extremely relevant legal point that I'm sure everyone
15 considered and it's referred to in the debtors' response. That
16 being said, I heard the testimony from Mr. Resnick and I tend
17 to agree with that that while there is some quantifiable effect
18 of a higher interest cost, it's fairly small. I am still of
19 the belief that each of the institutions that is signed up to
20 the EPCA is a real institution that wants to engage in business
21 in the future, engage in transactions in the future. And in
22 fact that they can't do deals unless they have the trust of the
23 people across the table from them. And the idea that they
24 would ultimately hold you all up in a way that would be
25 materially greater than the effect of such an interest cost on

1 them would have real consequences to them. And I would not
2 hesitate, as you know from the last three weeks, to explore
3 those events in great detail.

4 So there is a consequence in jerking people around.
5 And frankly, that goes beyond the document. But the document
6 itself has obligations in it to work to preserve the
7 transaction. And I have, before me, the testimony that this
8 isn't Mr. Tepper's point and that it's all of his investor's
9 point. His testimony was, in essence, like this is hurting a
10 group of cats. And I think there's probably some truth to that
11 given what happened with Goldman. So there is a risk in
12 leaving that question mark out there, as well as one, which
13 you've pointed out rightfully so, of agreeing to it.

14 MR. ROSENBERG: Your Honor --

15 THE COURT: Which is which cats will decide to walk
16 off the table.

17 MR. ROSENBERG: Your Honor, obviously you're right.
18 There are risks both ways. I suggest to this Court that in our
19 judgment the risk is much less telling Appaloosa today to get
20 its investors on board for this transaction with a modification
21 either of this cap or alternatively what happens if the cap
22 isn't met. For example, you could say that you would approve
23 the transaction only if within ten days of the production of
24 the final numbers they either waive or terminate without a fee,
25 so that we have an opportunity to move on with life.

1 THE COURT: But I guess, on that point, there's --
2 there's no -- on this condition it's -- the company has a -- at
3 some -- I was always of the view that you wouldn't have to wait
4 to the 31st of March and that you could call an anticipatory
5 breach.

6 MR. ROSENBERG: Well, Your Honor, I share that view.
7 However, the debtor apparently has not either shared or been
8 willing to --

9 THE COURT: Well, I don't know if that's the case. I
10 think they just -- they just wanted to protect what they had
11 knowing that others would raise the issue.

12 MR. ROSENBERG: Well, we raised it, Your Honor, I
13 assure you. The problem is that where that takes you is a
14 litigation over a long period of time, not unlike what Mr.
15 Butler was suggesting, you know. In six months you may have an
16 answer and somebody may owe somebody else money but in the
17 meantime you're floundering. And that is not a desirable
18 result. And this construct puts into Appaloosa's hand the sole
19 ability to create that result.

20 THE COURT: But let me -- let me make sure I
21 understand this aspect of the deal too. You do not have to
22 have as much debt here as you have, do you?

23 MR. ROSENBERG: Well, I think the business -- under
24 the present construct, yes. This is the debt under the sources
25 and uses which is required to fund this plan and for the

1 working capital that the business plan requires. You'd have to
2 renegotiate the plan. Exactly, Your Honor, what I'm
3 suggesting.

4 THE COURT: Well, you wouldn't -- you wouldn't,
5 necessarily, have to do that with Appaloosa though.

6 MR. ROSENBERG: Well, Your Honor, as Mr. Butler
7 pointed out, nobody else has come forward. We have discussed
8 from time to time a stand-alone plan with GM --

9 THE COURT: No, I'm not -- I'm talking about --
10 Mr. Resnick's testimony was that on this interest cost point,
11 and it hasn't been quantified so I'm not sure what the effect
12 is of, say, having 500 million dollars less debt or a hundred
13 million dollars less debt, how that effects your margin -- your
14 cushion.

15 MR. ROSENBERG: Uh-huh. Well, two points about that
16 Your Honor. One is, you know, if -- if the parties believe
17 that this is a temporary, however long that means, market
18 dislocation which will return to normal at some point, you
19 know, and an appropriately negotiated loan agreement with
20 appropriate pre-payment provisions to renegotiate and lower the
21 rates, you know, as eminently appropriate.

22 THE COURT: Well, why can't you value the interest
23 rate cost on that basis?

24 MR. ROSENBERG: You can do anything you want, Your
25 Honor. All I'm looking for is to have a little leeway to not

1 have Appaloosa hold us up --

2 THE COURT: But doesn't -- the condition doesn't
3 permit you to do that?

4 MR. ROSENBERG: No. No, it doesn't. Mr. Butler, are
5 you confirming that?

6 MR. BUTLER: No, I'm not confirming that. I think
7 there are -- the condition -- there's a condition that we have
8 that we have to meet. And ultimately we either meet it or we
9 determine there's other ways in which we can comply with it and
10 we sit down and sort that out. And I -- you know, that's why
11 you have the testimony from Mr. Sheehan you have. That the
12 company believed -- we would love, as you know, to have the
13 number you have -- we would like. Because we're not -- we're
14 in violent agreement with you but that's not what we were able
15 to negotiate. Mr. Miller testified to, you know, we -- we
16 voted on what we had and I'm -- and not what we aspired.

17 MR. ROSENBERG: Well, and I appreciate that. I
18 understand that and that's why I'm asking for the Judge's help
19 in getting us the proper result here.

20 THE COURT: Well, it seems to me unless some other
21 party is willing to make some concession to the plan investors
22 in return for that adjustment it's too big a risk.

23 MR. ROSENBERG: Well --

24 THE COURT: I mean, they negotiated an adjustment,
25 for example, based on the amount of unsecured claims to a

1 hundred and -- you know, they had a sliding scale above that
2 and that has been criticized. But there was obviously a
3 reason -- there was obviously a reason for doing that. People
4 were concerned that maybe that cap was too low. So there is an
5 ability, I suppose, to negotiate that. But --

6 MR. ROSENBERG: There's ability to negotiate if the
7 other party is willing to negotiate.

8 THE COURT: Right.

9 MR. ROSENBERG: And that hasn't happened. I assure
10 you we've tried. We've gotten the best deal we feel we
11 possibly can.

12 THE COURT: All right.

13 MR. ROSENBERG: And I think we've improved the deal
14 in a number of respects over what the debtor presented us with
15 a week ago or ten days ago, whenever it was.

16 MR. BUTLER: The committee has been very
17 constructive.

18 MR. ROSENBERG: But I -- you know, I'm prepared to
19 represent to this Court that without your help we've gone as
20 far as we can and we are left with the risk that one more time
21 there is an out here. A -- a major out that results in either
22 a walk-away or a serious renegotiation back to square one. And
23 that's all I'm asking Your Honor to take into consideration and
24 to help us to try to avoid.

25 THE COURT: Okay.

1 MR. ROSENBERG: There simply isn't enough leeway in
2 that number.

3 THE COURT: Okay.

4 MR. ROSENBERG: Thank you.

5 MR. BRILLIANT: My turn, Your Honor?

6 THE COURT: Unless the equity committee wants to say
7 anything. Your turn.

8 MR. BRILLIANT: For the record, Allan Brilliant on
9 behalf of certain bondholders, Your Honor.

10 You know, like Mr. Rosenberg, you know, we believe as
11 well, you know, that the -- I guess what we're referring to as
12 the December 3rd EPCA is just another in a long series of
13 options that the plan investors hoped -- hope to get here.

14 As -- Your Honor, I'm going to go through a bunch of
15 exhibits very quickly, given how late it is in the day. But if
16 you look at Exhibit 38, Your Honor, on page DPH-2EAA 0000388,
17 the document, you know, states it's an equity purchase
18 commitment agreement waiver letter. Since August 3, 2007, the
19 investors in the company have been exploring with each other
20 possible modifications to the EPCA and certain related
21 transaction documents which modifications are documented by the
22 documents attached to that certain proposal letter dated the
23 date hereof.

24 Your Honor, you know, it's very apparent from the --
25 from the written record, all of which is in evidence, that the

1 day after Your Honor approved the EPCA that negotiations
2 started almost immediately, the very next day, to modify the
3 agreements. You know, the -- what we have here with the plan
4 investors are very aggressive investors who negotiated a very
5 onerous document that is highly favorable to them, that gives
6 them the ability to walk at almost any time if the debtors have
7 to do anything that is not completely within the four corners
8 of the document. Any adjustment on the plan of reorganization
9 is subject to their consent.

10 THE COURT: Do you really believe that?

11 MR. BRILLIANT: Your Honor, I mean --

12 THE COURT: Did your clients own the debt when this
13 agreement was up for approval in August?

14 MR. BRILLIANT: Some of them did. I believe that
15 most of them did, Your Honor, yes.

16 THE COURT: Okay.

17 MR. BRILLIANT: And, you know, the August EPCA, as
18 Your Honor knows, had a plan which was going to provide cash
19 and common stock to the senior noteholders, you know, not the
20 seventy-five percent in common stock and approximately twenty-
21 five percent in rights at a level which is substantially higher
22 than the real market value of the stock. At that point in time
23 we were involved in a very different situation. But yes --

24 THE COURT: The same outs.

25 MR. BRILLIANT: Excuse me, Your Honor?

1 THE COURT: You're referring -- the outs you were
2 referring to were the ones in that agreement.

3 MR. BRILLIANT: Yes, Your Honor. And Your Honor is
4 right, we didn't object to it at that point in time but we're
5 now at a situation, Your Honor, where having had the experience
6 since August of dealing with these investors we find ourselves
7 now, after having to renegotiate this document in a way which
8 has been very favorable to them and not very favorable to the
9 estate, that I agree with Mr. Rosenberg, we should learn from
10 what has happened in the past here. Although, Your Honor --

11 THE COURT: What is your alternative?

12 MR. BRILLIANT: Your Honor, at this point in time we
13 believe that if the debtors made an effort to go into the
14 marketplace that they would be able to either find a
15 replacement investor or be able to do a stand-alone plan where
16 the bondholders and other creditors of the estate would
17 potentially put in some money or backstop themselves, you know,
18 a rights offering to enable the company to emerge from
19 bankruptcy. But because of the --

20 THE COURT: Where's the evidence of that?

21 MR. BRILLIANT: Your Honor, there is no evidence in
22 the record of it but I'm answering, Your Honor's, you know,
23 question.

24 THE COURT: I know but you said you believed this
25 could happen.

1 MR. BRILLIANT: Your Honor, I think that the -- the
2 evidence, though, is pretty clear here that the debtors have
3 made no effort to go into the marketplace and find another
4 investor, out of fear in some respects that the current plan
5 investors would use the discussions or the search with other
6 parties as a reason to terminate the agreement under a
7 modification of the recommendation provision in the agreement.
8 And the debtors have not gone out and done that. And although
9 the debtors would say -- have said to Your Honor that the fact
10 that no one else came forward is evidence that there is no
11 better deal in the marketplace. But Your Honor, we don't
12 believe that that is, in fact, any evidence at all that the
13 Appaloosa deal has been locked up. The debtors had signed to
14 it. They were not out looking for other proposals. They never
15 gave the impression in the marketplace generally that there
16 were other proposals -- that they would consider other
17 proposals. And consequently, nobody -- nobody, you know, came
18 in. But that doesn't necessarily mean that nobody else was
19 interested.

20 But, you know, the -- the -- Your Honor there's --
21 the deal that you're being asked to approve today is illusory
22 in several respects. One is, the closing condition that
23 Mr. Rosenberg has also objected to, which would enable the plan
24 investors to walk if the pro forma interest rate can't be met.
25 And the second is that the plan of reorganization that is

1 required to be prosecuted here is non-confirmable. It requires
2 that the debtors classify --

3 THE COURT: What is the amount of the toppers debt?

4 MR. BRILLIANT: Excuse me, Your Honor?

5 THE COURT: What is the amount of the toppers claim?

6 MR. BRILLIANT: You know, they now purport to be
7 reducing it but it's approximately 400 million dollars of face
8 amount. Your Honor, you asked Mr. Butler what the total amount
9 of the senior debt was. I believe Mr. Butler gave you an
10 erroneous answer. He gave you the total amount of the -- of
11 the debt that they would consider to be senior if you
12 substantively consolidated certain of the entities. Actually,
13 the toppers were issued by Delphi Corporation and are senior --
14 I'm sorry; are subordinate to all of the debt at Delphi
15 Corporation. That is the -- the senior notes --

16 THE COURT: What is that amount?

17 MR. BRILLIANT: I'm sorry; excuse me Your Honor?

18 THE COURT: What is that amount?

19 MR. BRILLIANT: Your Honor, they don't disclose it in
20 their disclosure statement.

21 THE COURT: Well, what do you think it is?

22 MR. BRILLIANT: Excuse me?

23 THE COURT: What do you think it is?

24 MR. BRILLIANT: It's the -- you know, it's the --
25 it's a little bit confusing because we don't know how much of

1 it might be, you know, guaranteed or (indiscernible) certain of
2 the debt exists but substantially less than three billion
3 dollars.

4 THE COURT: How -- how much?

5 MR. BRILLIANT: I would think it's the two billion
6 dollars of notes plus -- you know, Your Honor I would only be
7 speculating but, you know, hundreds -- plus the interest plus
8 hundreds of millions of dollars but not, you know, not another
9 billion dollars.

10 THE COURT: So you'd say about two and a half?

11 MR. BRILLIANT: That's probably right, Your Honor.
12 But I'm just -- I'm just speculating.

13 THE COURT: Including post-petition -- including
14 post-petition interest?

15 MR. BRILLIANT: Well, it's -- there's two billion
16 dollars of bonds and, I think, almost 400 million dollars in
17 post-petition interest. So I think it's significantly more
18 than that at this point, Your Honor.

19 But in any event, Your Honor, the -- you know the
20 plan --

21 THE COURT: Well, let's go through the math then, for
22 a second. I take it that your argument that the plan is not
23 confirmable is based upon the senior debt voting against the
24 plan because they're not being paid in full?

25 MR. BRILLIANT: Well --

1 THE COURT: Let's leave aside the classification of
2 points for the moment.

3 MR. BRILLIANT: Yes, Your Honor.

4 THE COURT: All right. Then let me -- let me just
5 follow up on that.

6 MR. BRILLIANT: Sure.

7 THE COURT: From Mr. Resnick's testimony at -- not
8 the negotiated plan value but at the midpoint of Rothschild's
9 valuation, which apparently a lot of people thought was too low
10 when they bought their debt, based on the chart that was given
11 to me and by the 2019 statement your clients filed. A hundred
12 percent of principal gets paid, is that fair?

13 MR. BRILLIANT: At the midpoint?

14 THE COURT: Yes.

15 MR. BRILLIANT: Yes, Your Honor. Actually, I have a
16 demonstrative chart --

17 THE COURT: Well, let me just -- you can see if I'm
18 wrong on this. And that basically eighty-eight to ninety
19 percent of principal and interest gets paid at the midpoint and
20 you are premising your argument, I gather, that the holders of,
21 let's just round it at three billion dollars of debt, will vote
22 against the plan jeopardizing their recovery of a hundred
23 percent of their principal claim and a sizeable portion of
24 their post-petition interest claim at the midpoint of
25 Rothschild's valuation. A valuation lower than what supposedly

1 the most knowledgeable group of those holders bought their
2 claims at, in return for the opportunity in a chaotic
3 environment to suck another ten percent of value out for post-
4 petition interest from the 400 million dollar toppers claim.
5 Does that sound like a rational vote to you?

6 MR. BRILLIANT: Your Honor, you're making
7 assumptions.

8 THE COURT: No, I'm asking you. Correct whatever
9 assumptions I made.

10 MR. BRILLIANT: Your Honor, I don't believe those are
11 the facts.

12 THE COURT: Well, tell me where they are.

13 MR. BRILLIANT: Okay. Can I show you this
14 demonstrative chart which has been admitted into evidence?

15 THE COURT: Just go through it.

16 MR. BRILLIANT: Okay.

17 THE COURT: It's simple numbers.

18 MR. BRILLIANT: Sure, Your Honor. The first thing
19 is, and I know Your Honor doesn't believe in trading values.
20 And I could tell that Your Honor looked at the --

21 THE COURT: I believe in them to some extent.

22 MR. BRILLIANT: Okay.

23 THE COURT: I wonder what the people that bought
24 believing a sixteen billion dollar valuation believe in them.

25 MR. BRILLIANT: Well, Your Honor --

1 THE COURT: I also have real questions about the
2 nature of this market. There's no evidence as to how actively
3 traded it was or what information those who are trading
4 possessed or what mistaken beliefs they were under at the time
5 that they bought it, as far as the course of the bankruptcy
6 case or what shorts they held.

7 MR. BRILLIANT: Right.

8 THE COURT: but let's leave that aside.

9 MR. BRILLIANT: Okay. Your Honor, first thing on the
10 issue of shorts, I'd like to make it very clear --

11 THE COURT: I just --

12 MR. BRILLIANT: If you had looked at our 2019 you'd
13 see that --

14 THE COURT: No, I'm not talking about your --

15 MR. BRILLIANT: -- you'd see that we don't -- we
16 don't have any.

17 THE COURT: I'm not talking about your clients. I'm
18 talking in the market generally.

19 MR. BRILLIANT: Okay.

20 THE COURT: But I'm just focusing on the midpoint of
21 the valuation range.

22 MR. BRILLIANT: Okay. Now first of all, Your Honor,
23 if you look at the disclosure statement, the midpoint valuation
24 of Rothschild is not the recovery that the holders will get.
25 The holders --

1 THE COURT: That's not the question I posed to you.

2 MR. BRILLIANT: I understand, Your Honor. But I want
3 you to -- I want Your Honor to --

4 THE COURT: No, I want you to answer my question.

5 MR. BRILLIANT: Sure.

6 THE COURT: I want to know why a rational business
7 person would risk blowing up recovery of a hundred percent of
8 their principal claim at the midpoint of Rothschild's plan
9 valuation and, what I gather, about seventy percent of their
10 post-petition interest claim, in order to have the chance in a
11 chaotic environment where everyone is negotiating with everyone
12 else again, at a cost of twelve million dollars a month of just
13 the cost of the case, to get some additional recovery out of
14 the sub-debt class.

15 MR. BRILLIANT: Right. Your Honor, if in fact the
16 Rothschild midpoint valuation was the distribution, you may be
17 right. But it's not. And if Your Honor would let me explain,
18 you know -- you know, several things.

19 First of all, the Rothschild valuation expressly says
20 that it's not subject to --

21 THE COURT: I know it's not the distribution. At the
22 distribution level -- let me correct this. Mr. Fox, very -- as
23 he frequently does, I thought got, sort of, got to the heart of
24 your argument by saying in his -- his disclosure statement
25 amendment that if, in fact, one substituted Rothschild's

1 midpoint for the plan value that that would be the recovery, do
2 you disagree with that?

3 MR. BRILLIANT: Yes, Your Honor.

4 THE COURT: You do?

5 MR. BRILLIANT: I do. And if I can explain,
6 Your Honor.

7 THE COURT: Okay. Okay.

8 MR. BRILLIANT: First of all, I'd like to give
9 Your Honor our demonstrative chart so you can see the ranges.
10 Your Honor, in order to realize the midpoint of the Rothschild
11 valuation, first of all they'd have to be right. But let's
12 just set that aside for a second.

13 The second thing is, the Rothschild valuation is
14 before any dilution for the restricted stock that will be
15 issued, you know, pursuant to the plan which also will reduce,
16 you know, the valuations, you know -- you know, here. And then
17 the second issue is, Your Honor, is that the distributions are
18 not entirely in stock but instead in order to reach this
19 midpoint valuation, each of the investors would have to invest
20 about forty percent of the amount that they're -- of the par
21 amount of their claims in new stock in order to get a value of
22 stock which would, you know, equal this amount.

23 So it's not just that somebody's going to give you,
24 you know, cash equal to the midpoint of the Rothschild
25 valuation or even common stock equal to the Rothschild midpoint

1 valuation but the investors would have to pay forty percent of
2 the amount they're owed in order to have stock which would be,
3 you know, somewhere in the ballpark of, assuming that
4 Rothschild is right about the valuation as to -- as to where it
5 would be. But the -- you know, and I know Your Honor doesn't
6 necessarily, you know, take a lot of credence in market trading
7 but the reality is the implied value of the company, based upon
8 the current trading prices of both series of notes, both the
9 trups and the senior notes is below the Rothschild low point.

10 THE COURT: And you don't think that has anything to
11 do with the uncertainty about the EPCA?

12 MR. BRILLIANT: No, Your Honor, I don't. You know,
13 in fact Your Honor, one would have thought that with the
14 official creditors' committee and the equity committee being on
15 board if -- that there would have been more certainty and the
16 stock price -- the bond price would have gone up.

17 THE COURT: You know, I'm going to cut this short.
18 Mr. Brilliant, your clients can vote however they want. And
19 I'm going to leave it at that.

20 MR. BRILLIANT: Your Honor, you know, it sounds like
21 Your Honor made up your mind --

22 THE COURT: I made up my mind on that issue.

23 MR. BRILLIANT: Okay. And I'm not going -- you know,
24 and I'm not going to belabor this. All I would ask, you know,
25 we come back tomorrow that we have an opportunity to convince

1 you with respect to the classification --

2 THE COURT: I have some things to say about
3 classification. But ultimately, I am -- I think, fairly
4 perplexed, given what I've heard today, at your client's
5 position. And I'll leave it at that.

6 MR. BRILLIANT: Okay. I take it Your Honor --

7 THE COURT: Well, that was just to your point that
8 the plan is not confirmable. I don't know if you had other
9 arguments about --

10 MR. BRILLIANT: Oh, I do, Your Honor. I thought you
11 were telling me that you decided.

12 THE COURT: No, I have -- my perplexity goes to what
13 your clients hope to achieve in respect of their senior
14 rights --

15 MR. BRILLIANT: Okay.

16 THE COURT: -- given this plan.

17 MR. BRILLIANT: right. Well, Your Honor, we -- you
18 know the --

19 THE COURT: Not on your arguments on the EPCA, so you
20 can continue with those.

21 MR. BRILLIANT: Thank you, Your Honor. I'd like to
22 say just one more thing and then I'll move on. You know, and
23 I'm sure Your Honor understands this. I think we have a
24 fundamental, you know, disagreement about value. And that's
25 really what it comes, you know, down to. If it was a small

1 disagreement then, I think, the logic that Your Honor, you know
2 propounds, you know, might be relevant. But it's not a small,
3 you know, disagreement. It's not a ten or twenty point
4 disagreement it's a significant, you know, disagreement.
5 The -- I know Your Honor doesn't view bond prices as being all
6 that meaningful.

7 THE COURT: Well, if we have that disagreement about
8 value, then I guess your clients are schizophrenic because they
9 have that disagreement with themselves since they bought in at
10 a value, in many cases, above Rothschild's high end value.

11 MR. BRILLIANT: At points in time, when the market
12 was different, when the macro-economic conditions were
13 different, when the expectation of General Motors production
14 for the future was different, when the expectation of a
15 possible recession was different. Yes, Your Honor, they made
16 some mistakes. I think they understand that. And I think what
17 they're trying to do, as best they can, is to, you know,
18 maximize, you know, their investment based upon, you know,
19 their rights as creditors -- as senior holders in the
20 bankruptcy case.

21 THE COURT: Well, if that's what they're doing,
22 that's fine.

23 MR. BRILLIANT: I'm sorry, I couldn't hear you, sir.

24 THE COURT: They're entitled to try do that however
25 they want to do it, I suppose.

1 MR. BRILLIANT: Yeah. Well, you know, Your Honor,
2 from a, you know, a business judgment perspective, I think we
3 all agree that the O'Ryan, you know, applies. That Your Honor
4 has to substitute your own business judgment here for the
5 judgment of the board of directors, giving appropriate due
6 deference to the board as Your Honor deems to be appropriate.
7 You know, our sense here, Your Honor, like Mr. Rosenberg, is
8 that, you know, given, you know, the historical relationship
9 with the plan investors and the onerous conditions that would
10 be contained in the, you know, amended December 3rd --

11 THE COURT: Well, can we go to that? Mr. Rosenberg
12 identified one onerous condition. And I -- as I said to
13 Mr. Tepper, I am concerned about the optionality inherent in
14 that decision and whether -- whether it accurately reflects a
15 business concern. Are there others?

16 MR. BRILLIANT: We see others, Your Honor. If Your
17 Honor were to rule tomorrow on plan classification, that would
18 give them a walk right.

19 THE COURT: Why is that -- I don't understand that.
20 If the treatment is the same but they're in a different class,
21 you think that gives them a walk right?

22 MR. BRILLIANT: Yes, Your Honor. I mean it's --

23 THE COURT: ON what basis?

24 MR. BRILLIANT: They have to approve any --

25 THE COURT: Doesn't it refer to treatment as opposed

1 to classification?

2 MR. BRILLIANT: The plan is now substituted for the
3 plan framework agreement. And any modifications to that -- to
4 the plan has to --

5 THE COURT: Even if there's not a modification to the
6 economics? You just simply move the toppers into a different
7 class?

8 MR. BRILLIANT: Yes, Your Honor.

9 THE COURT: You really believe that?

10 MR. BRILLIANT: I do believe that, Your Honor.

11 THE COURT: Well, I don't know -- you have Mr.
12 Lauria. You better ask your client that because I don't think
13 that's right. You don't have to do it now, you can do it
14 overnight.

15 MR. BRILLIANT: Thank you, Your Honor.

16 THE COURT: Because I read it as said treatment not
17 the plan.

18 MR. BRILLIANT: Well, you know, I don't think anybody
19 would want to -- would want to find out, Your Honor.

20 THE COURT: Well, I would rule on that very quickly.

21 MR. BRILLIANT: And the -- you know, and any changes
22 to the inter-credit agreement as well, which is part of the,
23 you know, the plan or the way it's treated under the plan or --

24 THE COURT: I'm sorry; the inter-creditor agreement?

25 MR. BRILLIANT: The way that the subordination

1 agreement, you know, is waived under the plan, if there were
2 to, you know, to be any. Obviously if Your Honor --

3 THE COURT: You mean the treatment of the toppers?

4 MR. BRILLIANT: Yes, Your Honor. I mean,
5 historically, as I'm sure Your Honor knows, senior debt and
6 junior debt are classified, you know, separately. And it's the
7 vote of the senior debt which would, you know, cause the, you
8 know, the waiver of the -- of the subordination agreement. Or
9 alternatively, you know, the debtors, you know, could seek to,
10 you know, prove that as a matter of fact that the senior class
11 is being paid in full. You know, here under this plan they
12 don't purport to do either, they would purport to have them,
13 you know, vote in the same class and they don't require, you
14 know, a fact finding of payment in full for the, you know, for
15 the waiver of the inter-creditor agreement. You know, because
16 of that and the requirement under the Bankruptcy Code that the
17 inter-creditor agreement, you know, be enforced the, you know,
18 the -- you know, the plan, you know, as it's currently, you
19 know, drafted. And obviously if Your Honor orders it to be
20 changed. But as it's currently drafted it's just not
21 confirmable.

22 You know, in addition, Your Honor, the -- you know,
23 we believe that the, you know, we believe that the testimony
24 was pretty clear that Mr. Tepper used his position as a plan
25 investor --

1 THE COURT: So is that -- are those the conditions?
2 I'm still focusing on the conditions.

3 MR. BRILLIANT: Yes, Your Honor. Those are -- those
4 are -- I mean there's other things that have been, you know,
5 discussed here today. The fact that the debtors, you now, are
6 limited in the ability to have conversations with other
7 parties. Mr. Rosenberg, pointed out and we agree, you know,
8 the lockups with other creditors, you know, make things, you
9 know, very difficult with respect to -- I think the testimony
10 was pretty clear with respect to, you know, the Goldman, you
11 know, Sachs issue. Now it's hard to have, you know, any
12 sympathy for Goldman Sachs given that they had, you know, not
13 gone forward with the October 29th deal which --

14 THE COURT: It says to me that, in other words, the
15 lockup was a good thing there.

16 MR. BRILLIANT: Excuse me, Your Honor?

17 THE COURT: It sounds to me, in other words, the
18 lockup was a good thing there.

19 MR. BRILLIANT: No, Your Honor.

20 THE COURT: If -- if it was going to exert pressure
21 on someone who was going to walk from the deal, not because
22 they wanted to propose a better deal but because they thought
23 the deal was not good enough for them.

24 MR. BRILLIANT: I think, you know, they found the
25 deal wasn't good enough for them but they were precluded from

1 having conversations with other parties in interest to try to
2 find something that may have been better for everyone.

3 THE COURT: Is there any evidence that that's what
4 they were up to?

5 MR. BRILLIANT: I guess, Your Honor, there's -- the
6 only evidence is that, from the documents, is that they wanted
7 to talk to GM about the possibility of, you know, of
8 reconfiguring the backstop.

9 THE COURT: Okay.

10 MR. BRILLIANT: The -- Your Honor, you know, the
11 company, you know, here has, you know, put so much, you know,
12 emphasis on trying to, you know, emerge from bankruptcy
13 expeditiously that, you know, that they, you know, are willing
14 to overlook, you know, the fact that, you know, there are
15 inherent risks in going forward, you know, with a plan, you
16 know, that's not, you know, supported, you know, by, you know,
17 all of its creditor constituencies. Obviously it's a lot
18 easier, you know, to, you know, to cram down rather than to,
19 you know, to, you know, cram up.

20 But, you know, I understand, you know, Your Honor's
21 view that ultimately if the disclosure statement goes out, you
22 know, the bondholders, you know, will make, you know, their
23 decision. And I think Your Honor, you know, if you, you know,
24 were to approve the EPCA which we, you know, we, you know,
25 don't support because we think its -- in the long run it's

1 holding back the ability of the company, you know, to emerge
2 from bankruptcy. When, you know, the plan was put into place
3 at a point in time when the expectation was that there was
4 enough value to pay all the creditors, you know, in full and
5 leave something for equity. As valuations change, the capital
6 market has changed. The inability of the company to borrow
7 cash rather than trying to, you know, start from a, you know,
8 fresh, you know, perspective based on value. As Mr. Resnick
9 testified, they tried to just keep as many things in place and
10 just saw through other things. But the reality is that the
11 plan they came up with was very much, you know, different, you
12 know, especially, you know, for, you know, the senior creditors
13 who are no longer getting cash and no longer getting the
14 remainder of their distributions just in stock but now getting
15 a large portion through the rights offering. And, you know, we
16 believe that going forward, at this point, with this plan with
17 this EPCA in the long run will lengthen the time of stay in
18 bankruptcy because it'll force the senior noteholders to have
19 to exercise, you know, their vote, you know, to have the plan,
20 you know, not go forward which in the long run will, you know,
21 delay the confirmation of the plan.

22 THE COURT: I guess that's their choice.

23 MR. BRILLIANT: That's --

24 THE COURT: This economic beast.

25 MR. BRILLIANT: That's right, Your Honor. The -- you

1 know, the last thing, you know, I'm going to do Your Honor is
2 just focus a little bit on the EPCA itself and the -- we gave
3 you a chart which has been stipulated to, you know, by the
4 debtors. The November 14th EPCA, which was, you know, vilified
5 by all the parties in the case at the -- at the midpoints
6 provided sixty-two of -- 87.1 percent to the general unsecured.
7 The December 3rd EPCA --

8 THE COURT: Wait. I'm sorry. One percent of what?

9 MR. BRILLIANT: Of par plus accrued.

10 THE COURT: On what basis?

11 MR. BRILLIANT: The Rothschild midpoint. And the
12 current EPCA, according to the disclosure statement that was
13 filed on Monday by the debtors would provide 89.2 percent at
14 the Rothschild midpoint. It's an increase of 2.1 percent.
15 That's the only --

16 THE COURT: Of par plus accrued?

17 MR. BRILLIANT: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. BRILLIANT: 2.1 percent, that's the change for
20 the general unsecured creditors under the plan at the
21 Rothschild midpoint from November 14th to December 3rd. There
22 were some other -- so this, you know -- this is basically, you
23 know, the same deal with the investor group. The only changes
24 as Mr. Butler, you know, pointed out was a slight change in the
25 Pref A conversion price and an even smaller change, a fifty

1 million dollar change in the Pref B, which were counteracted by
2 an increase in the dividend rate. The real give-ups, since
3 November 14th, have come from General Motors which agreed to
4 take 137 -- I think it's 137 million dollars less, you know,
5 twenty-seven million dollars -- I guess it was 127 million --
6 twenty-seven million dollars of which was given to the equity.
7 And effectively a hundred million dollars to the -- you know,
8 to the creditors.

9 THE COURT: Do you think that's still going to be
10 there if the EPCA amendment is not approved, because of your
11 client's objection?

12 MR. BRILLIANT: Yes, Your Honor.

13 THE COURT: You do?

14 MR. BRILLIANT: Yes, Your Honor.

15 THE COURT: You think your clients are going to stake
16 their year-end bonuses on that?

17 MR. BRILLIANT: Your Honor, they didn't send me here
18 and aren't paying me here if --

19 THE COURT: Well, let's -- let's focus on that. Your
20 clients have not signed any confidentiality agreements that
21 give them access --

22 MR. BRILLIANT: That's right, Your Honor.

23 THE COURT: -- to the information that the two
24 committees had access to?

25 MR. BRILLIANT: That's right, Your Honor. And Your

1 Honor had asked Mr. Butler where I had signed a confidentiality
2 agreement --

3 THE COURT: No, I know -- I know you have but there
4 is a difference between a businessman and a lawyer.

5 MR. BRILLIANT: Right. Well, actually we are subject
6 to the protective order.

7 THE COURT: I know. I know you --

8 MR. BRILLIANT: And we did not sign a confidentiality
9 agreement because the confidentiality agreement --

10 THE COURT: But you're not making business decisions
11 for your clients.

12 MR. BRILLIANT: That's right, Your Honor.

13 THE COURT: You don't have a -- your 2009 says you do
14 not have a power of attorney to make business decisions for
15 your clients.

16 MR. BRILLIANT: That's right, Your Honor. I think,
17 one thing Your Honor, you know -- should note here --

18 THE COURT: I will keep an open mind for tomorrow,
19 but I can tell you that I am not of the view that you can turn
20 an enterprise like this around over the issue that you've
21 identified.

22 MR. BRILLIANT: Which --

23 THE COURT: And I think a reasonable businessperson
24 would understand that. Now maybe I'm going to be proven
25 wrong --

1 MR. BRILLIANT: Your Honor, I guess --

2 THE COURT: -- maybe they will vote no and then
3 they'll have to explain to their investors and their managers
4 why and that'll be their choice. Just as the representatives
5 of the unions had to make hard choices, and they made them, and
6 GM has, the creditors' committee have, they've all made choices
7 to the people for whom they're fiduciaries based on the best
8 information they had.

9 MR. BRILLIANT: Your Honor, one thing I would point
10 out here, and obviously Your Honor is aware of this, you know,
11 because the debtors have their disclosure statement on file,
12 there is a lot of information in the marketplace. We don't
13 believe there's enough but to the extent that Your Honor
14 approves the EPCA today, as I said with respect to the
15 classification and other issues, we would like to see, you
16 know, those resolved and favorably to us and a fair disclosure
17 statement go out so people can vote on a fair disclosure
18 statement. But there is a business plan, there are financial
19 projections, there is a lot of information --

20 THE COURT: I understand.

21 MR. BRILLIANT: -- in the marketplace. This is not a
22 situation where you have a private company --

23 THE COURT: And they haven't voted yet either.

24 MR. BRILLIANT: That's right, Your Honor.

25 THE COURT: Okay.

1 MR. BRILLIANT: Thank you, Your Honor.

2 THE COURT: Okay. By the way is it their view that
3 the concession by GM, as a senior creditor, would go to their
4 benefit or to the topper's benefit?

5 MR. BRILLIANT: Well, it can't go to the topper's
6 benefit Your Honor. You know, the toppers are contractually
7 subordinate as it -- as it relates to the senior notes, the
8 toppers -- any distribution they would get they would have to
9 turn over by virtue of -- of contract.

10 THE COURT: Okay.

11 MR. BRILLIANT: So that's -- that's not an issue.

12 THE COURT: Okay.

13 MR. BRILLIANT: There's this issue of -- of
14 substantive consolidation and whether or not senior holders who
15 have contractual, you know, subordination rights with the
16 toppers should be classified, you know, with OPCO creditors who
17 do not have that basis and who aren't even creditors of the --

18 THE COURT: So it's your client's view that if GM is
19 willing to make a concession to the toppers for a consensual
20 plan, your clients take the benefit of that?

21 MR. BRILLIANT: That's -- that's the law, Your Honor.

22 THE COURT: Okay. All right. Mr. Fox?

23 MR. FOX: Your Honor, I'm not sure there's much else
24 to cover at this point.

25 THE COURT: Okay.

1 MR. FOX: And I know the hour is late. I would
2 certainly be happy to answer any of your questions that you may
3 still have. I would say this, it seems to me that in some
4 sense we're balancing a set of event risks that are on the --
5 on the debtors' --

6 THE COURT: You persuaded that guy to hang up.

7 MR. FOX: And he gave up a long time ago and forgot
8 things. The series of event risks based on -- on the issues
9 that the debtors identified. There also seems to be a series
10 of event risks that, for instance, committee counsel has
11 identified.

12 THE COURT: Well, there's one big one.

13 MR. FOX: Well that -- yes, that's right. And as
14 well as event risks, as you will, really plan risks and I can't
15 begin to predict how people will vote or not or where this
16 goes. I mean, as you get down the road to a confirmation
17 hearing, I mean, you're right that the recovery based on the
18 midpoint valuation even, you know, is a fairly high recovery.
19 On the other hand I, for one, have trouble reconciling that
20 with what's been happening in the market with respect to the
21 trading values. Not because I'm suggesting that there's, you
22 know -- that the Rothschild valuation is wrong, for instance.
23 I'm not suggesting that. But there seems to be a perception in
24 the market among bondholders that seems to be very different.
25 And to what effect that has, I don't know.

1 THE COURT: Have you ever sat in on these guys
2 talking to each other?

3 MR. FOX: Which guys?

4 THE COURT: These traders?

5 MR. FOX: No, well --

6 THE COURT: They can get themselves pretty fired up.

7 MR. FOX: Oh, yeah. They go all the way one way and
8 then they go all the way the other way.

9 THE COURT: They can. And sometimes they're not even
10 sure why and sometimes they are sure why, because they think it
11 may have short-term effect on things.

12 MR. FOX: I understand. But I mean, at this point,
13 there is -- you know, there have been plans and drafts and
14 draft disclosure statements filed that presumably people are
15 aware of. They seem to have an effect when they get filed.
16 And in other, I would say, more typical situations one tends to
17 see the, you know, that prices will tend to move up towards
18 what is an anticipated valuation as opposed to moving away from
19 it. I can't reconcile what's happening here.

20 In terms of the capital structure and the issues at
21 confirmation there is, in a sense, two ways to go. One is to
22 say, okay, well we substantively consolidate everything, which
23 is what the plan -- the debtors' plan provides, and then take
24 value from the toppers to give to senior creditors, both debt
25 and trade creditors and try to make them a little more whole.

1 Mr. Tepper's view, which may not necessarily be the
2 wrong view, of a different way to go is not to substantively
3 consolidate so that the value of Delphi Corp., which relies
4 heavily on the offshore entities, is kept for the Delphi Corp.
5 creditors which is, primarily, the senior debt, the
6 subordinated debt, the claims, at this point, of the UAW at 140
7 million and the IUE at 125 or twenty-six million. And maybe
8 there's some trade claims that are asserting themselves with
9 Delphi Corp. And then question what the value is of DASS LLC
10 and then the trade creditors at that level.

11 Now, Mr. Tepper argues that that's the way it should
12 go. That the DASS LLC entities are, you know, completely under
13 water and -- and, you know, they wouldn't be getting anything
14 but for substantive consolidation argument, the basis for which
15 is not entirely clear here. Which is -- but simply -- the
16 point is, it's another way to look at how this all works out.

17 THE COURT: But how many -- how many deals would you
18 have to renegotiate to do that?

19 MR. FOX: Hard to say.

20 MR. ROSENBERG: Many, many.

21 THE COURT: Including collective bargaining
22 agreements?

23 MR. FOX: No.

24 THE COURT: If you're really talking about a
25 separation of these companies?

1 MR. FOX: No, I don't think you're necessarily
2 talking about a separation. I mean, there could always be a
3 contribution down to in effect buy back those entities. It --
4 it clearly is complicated but the point is that there's an
5 event risk there, if you will, with respect to the plan.
6 That's the two sides of the coin, as we say.

7 THE COURT: Well, I will say this, the people that
8 often get themselves fired up on the trading desks, eventually
9 do make an economic analysis most of the time.

10 MR. FOX: We shall see.

11 THE COURT: We shall see.

12 MR. FOX: Thank you, Your Honor.

13 THE COURT: All right. I -- it's late. I'm going to
14 rule tomorrow morning but I do have a real concern about the
15 committee's point -- the creditors' committee's point. I don't
16 think, frankly, that Appaloosa and its co-investors really want
17 to go through this exercise again. I doubt Mr. Tepper does.
18 He's -- he was pretty frank.

19 If it turns out as there is a chance that the
20 interest cost condition is tripped over by a -- a -- something
21 that's reasonably foreseeable today, I don't frequently get on
22 my high horse but, it will happen again. And I just don't
23 think the parties really want that to happen and they probably
24 don't want to go into the confirmation process with that
25 hanging over the market and it seems to me that it is something

1 that the plan investors should discuss overnight with the
2 committee's representative so that there's a reasonable
3 compromise, so that we don't have to run the risk of going
4 through that exercise again.

5 And it seems to me, if we're talking about roughly a
6 forty million dollar interest cost difference, the compromise
7 should be mostly on the plan investors' part, at least based on
8 what I heard today as far as the actual economic effect of
9 that -- that result. To my mind, that's ultimately more of a
10 win/win scenario then coming back and going through this
11 exercise, including the cost of the last two weeks, which is
12 what would happen and perhaps in spades, since the plan would
13 have gone out for a vote by then, if in fact that condition
14 is -- is triggered. It just seems to me that it's -- this is
15 something that people of the sophistication of the plan
16 investor group should understand. And frankly, I think it's
17 the type of responsible point that the committee's right to
18 raise at this time. It's not a wish list type of point or a --
19 using Mr. Butler's metaphor, a request for a super-duper pie.

20 So I -- I -- as you can tell from my remarks,
21 otherwise believe that the debtors' motion should be granted
22 and I'll give a full ruling on that tomorrow. But I'm
23 reluctant to do so given this optionality because, as --
24 there's one thing I really do agree with Mr. Brilliant on,
25 which is no one wants to go through this twice. So I'm going

1 to resume tomorrow at 10 and I'd like you to report to me then,
2 at the beginning of the hearing. In fact, you can report to me
3 before then if you want to contact my chambers on this point.
4 And then I'll -- I'll issue my ruling and we'll proceed to the
5 disclosure statement hearing.

6 MR. BUTLER: Thank you, Judge.

7 MR. ROSENBERG: Thank you, Your Honor.

8 THE COURT: The only thing I have on for tomorrow is
9 Delphi so if you want you can leave your boxes here. I don't
10 think you can leave them in any other courtroom, probably have
11 them brought in here.

12 (Proceedings concluded at 7:31 p.m.)
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I, Esther Accardi, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

December 10, 2007

Signature of Transcriber

Date

Esther Accardi

typed or printed name